RECORD, CASE No. 13,455.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

TERM No., 302.

GEORGE H. SMITH, APPELLANT,

vs.

WILLIAM H. GAINES AND MARIA GAINES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

INDEX.

	Original.	Print.
Caption	1	1
Bill of complaint	1	1
Order entering appearance of Smith and granting time to answer	5	3
Order granting time to answer	6	4
Order granting time to answer	6	4
Order filing answer	7	4
Order granting leave to amend complaint	25	17
Order filing replication	26	17
Replication	26	17

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., NOVEMBER 9, 1891.

	Original.	Print.
Order granting leave to file amended answer	27	17
Order as to submission, filing briefs, &c.	27	18
Interlocutory decree	28	18
Order filing master's report	29	19
Master's report	30	19
Evidence before the master	35	23
Testimony of Wm. H. Gaines	35	23
A. B. Gaines	35	23
C. N. Rix	36	23
P. J. Ledwidge	36	24
S. P. Van Patten	37	24
Agreement as to bill	37	24
Depositions and proofs on final hearing	38	24
Claim, map of the Hot Springs reservation	39	24
Map of W. H. Gaines' claim, marked "A"	40	24
Map showing old improvements	41	24
Map of W. H. Gaines' claim, marked "B"	42	24
Certified copy of petition No. 784, before the Hot Springs Commission, &c.	43	25
Petition of W. H. and Maria Gaines	44	25
Letter, Commissioner to register and receiver, Nov. 25, 1851	72	37
Letter, Secretary to Commissioner, November 21, 1851	74	38
Application of Maria Gaines *et al.*	75	38
Register's certificates	76	38
Receiver's receipt, December 19, 1851	77	39
Copy of tract book	78	39
Writ of possession	80	40
Statement of evidence offered	82	41
Testimony of William H. Gaines	87	44
Robert B. Runyon	110	54
Jacob W. Parker	122	60
Alfred Whittington	131	65
Jacob W. Parker (recalled)	139	69
Abraham Peters	139	69
Henry Robinson	142	71
Albert Belding	145	72
John H. Lacroy	146	73
William Curl	150	74
George Belding	153	76
Charles Brown	173	85
Joe Crichter	178	87
Elijah Harris	180	88
Nathan H. Cloyes	183	90
Samuel H. Stitt	189	93
Hiram Irwin	192	95
William H. Gaines	193	95
Alphonso Curl	204	100
Hiram Irwin (recalled)	205	101
George M. French	207	102
Power of attorney from William H. Gaines to Albert B. Gaines, December 11, 1879	210	103

	Original.	Print.
Article descriptive of improvements of Abigail Dupass, March 25, 1852	212	104
List of real property assessed for taxation	213	105
Quitclaim of George Belding *et ux.*, October 20, 1877	214	105
Judgment of supreme court of Arkansas in Burke *vs.* Gaines *et al.*	216	106
Certified copy of petition No. 362, before Hot Springs Commission, &c.	218	107
Petition of George H. Smith	218	107
Deed, Kubler *et al.* to Smith, September 12, 1876	219	107
Map of George H. Smith's claim	222	109
Deed, Kubler *et al.* to Smith, September 12, 1876	223	109
Lease, Gaines to Kubler, October 1, 1870	226	111
Lease, receiver to Smith, October 2, 1876	227	111
Order to consolidate	230	113
Testimony of George H. Smith	230	113
John Kubler	232	115
Wm. H. Morris	234	116
George H. Smith (recalled)	235	117
John Kubler (recalled)	236	117
Findings of commission	237	117
Petition of Gaines	238	118
Lease, Gaines to Moscowitz, October 1, 1874	242	120
Lease, Gaines to Helfrich, June 16, 1874	244	121
Lease, Gaines to Helfrich, February 20, 1874	245	121
Lease, Gaines to Brantley, January 12, 1874	247	122
Lease, Gaines to Kubler, October 1, 1870	248	122
Lease, Gaines to Payne, June 1, 1872	249	122
Testimony of George M. French	250	122
W. P. Walsh	253	126
Dr. George H. Smith	256	128
John J. Sumpter	260	131
William H. Gaines	262	133
William Sumpter	270	138
James A. Smith	271	138
S. W. Vaughn	273	139
Mrs. M. J. Worley	274	140
John J. Sumpter	275	140
Certified copy of petition No. 632, before Hot Springs Commission, &c.	277	142
Petition of George H. Smith	277	142
Map of George H. Smith's claim	278	142
Deed, Kubler *et al.* to Smith, September 12, 1876	279	143
Deed, Kubler *et al.* to Smith, September 12, 1876	282	144
Lease, Gaines to Kubler, October 1, 1870	284	146
Lease, receiver to Smith, October 2, 1876	285	146
Order to consolidate	288	149
Testimony of George H. Smith	289	149
John Kubler	291	150
William H. Morris	293	152
George H. Smith (recalled)	294	152
John Kubler (recalled)	294	152

to pre-emption or entry, and that no claimant was entitled to a patent, but the same was still the property of the United States, which decision was rendered April 24th, 1876. Plaintiffs during said twenty years paid taxes on said property and fenced and built houses on the same and otherwise improved the same.

On the 1st day of October, 1870, plaintiff Wm. H. Gaines leased a lot of ground, which has since been laid off into lots and blocks by the Hot Springs Commission in pursuance of an act of Congress and is now known as lot (2) two, in block seventy-seven (77), to John Kubler, which lease was for the term of one year, to be
3 renewed at the election of the lessee from year to year until the title to the Hot Springs quarter section of land was settled, for an annual rent of —, payable in monthly installments of —.

Said lease also provides that all buildings and improvements erected on said lot by the lessee might be removed therefrom during the continuance of the lease or within thirty days thereafter, but that no buildings or improvements erected could be removed while said rent or any part thereof remained due and unpaid. It also provides that the lessor should have a lien on all buildings and improvements to secure the rent, a copy of which is hereto attached in Exhibit "A" and made a part hereof.

Said lessee took possession of said land under and by virtue of said lease only, and in no other way whatever, and he and — assigns occupied the same under said lease until the 1st day of June, 1876.

That on the 24th day of April, —, said lessee and *their* assigns owed the lessor for rent the sum of three hundred and eleven dollars and eighty-five cents ($311.85). Said lessee and *their* assigns failed to remove said buildings and improvements erected by them at any time during or within thirty days after the expiration of the lease, and by virtue of the provisions of the lease said buildings and improvements erected by said lessee and *their* assigns became the buildings and improvements of Wm. H. Gaines.

That on the 12th day of September, 1876, said lessee, John Kubler, sold and transferred to George H. Smith all his right, title, and claim to said premises, he, George H. Smith, well knowing before said transfer all the terms and conditions of said lease, which transfer was made without the knowledge or consent of the plaintiff.

Plaintiffs, by arrangement with George, Henry, and Albert Belding, having become the owner- of said claim, aver that in less than six calendar months after the first sitting of the Hot Springs Commission, under the act of Congress of the United States en-
4 titled "An act in relation to the Hot Springs reservation, in the State of Arkansas," approved March 3rd, 1877, they filed their claim before said commission to purchase said lot, and that George H. Smith filed a like claim, and upon the hearing of said claims they were consolidated by said commission for the purpose of hearing the testimony; and said petitions filed and the testimony taken before said commission clearly showed that George H. Smith had acquired his possession in no other way but by said lease

made by plaintiff Wm. H. Gaines to said John Kubler, as will more fully appear from a complete copy of the petition, testimony, and record entries in said claim, filed herewith and marked Exhibit "A" and made part hereof; and notwithstanding that said petition and testimony showed that defendant George H. Smith acquired possession only by virtue of said lease, and that, too, after the 24th day of April, 1876, to wit, September 12th, 1876, still said commission misconstrued the law applicable to that state of facts and awarded the right to purchase said lot to defendant George H. Smith, and since said award said defendant has purchased said lot from the United States and received a patent therefor, and on account of said misconstruction of the law as applied to the facts before said commissioner the right to purchase said lot, which in law, equity, and good conscience should have been awarded to plaintiffs, was by said misconstruction of the law illegally and wrongfully awarded to defendant George H. Smith by said Hot Springs Commission.

Plaintiffs aver that as defendants have never had any other right or title to said lot or to the possession thereof than that which they derived from said lease and under covenants to restore possession to plaintiff Wm. H. Gaines, that said defendants should be held to hold said lots as trustee- for the use and benefit of plaintiffs.

Plaintiffs offer to pay any sum of money that may be found due to the defendants or either of them by reason of -ny money paid to the United States for the purchase of said lots, and to do all other acts which may be found to be just and equitable.

Plaintiffs aver the property herein sued for is worth more than five hundred dollars, and that this cause of action arises wholly under the law of the United States.

Plaintiffs ask that defendants be required to answer this bill, but not under oath.

And they pray that an account may be taken of the state of accounts between themselves or either of them and said defendants severally; that they may be allowed reasonable rents for the occupancy of the said premises; that defendants may be decreed to hold said lots as trustees for the plaintiffs and to convey the same to the plaintiffs, and that they may have such other relief as may be equitable.

M. W. BENJAMIN,
R. G. DAVIES, *Solicitors.*

Good for costs.
M. W. BENJAMIN.

(Endorsed:) Filed and writ issued May 23rd, 1884. Ralph L. Goodrich, clerk, by W. P. Feild, D. C.

UNITED STATES OF AMERICA, }
Eastern District of Arkansas. }

Be it remembered that at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the 14th day of April, anno Domini one thousand eight hundred and eighty-four, at the United States court-room,

in the city of Little Rock, Arkansas, the Honorable Henry C. Caldwell, district judge, presiding and holding said court, the following proceedings were had, to wit:

And on July 5th, 1884, as follows:

6 WM. H. GAINES *et al.* } 634.
vs.
GEORGE H. SMITH *et al.* }

Comes the defendant George H. Smith, in his own proper person, and enters herein his appearance, and on his motion leave is granted him sixty days in which to file answer.

And on September 4th, 1884, as follows:

WM. H. GAINES and WIFE } 634.
vs.
GEORGE H. SMITH *et al.* }

Comes the defendant George H. Smith, by John McClure, Esq., his solicitor, and by consent of parties leave is granted said defendant sixty days in which to file his answer.

UNITED STATES OF AMERICA, }
Eastern District of Arkansas. }

Be it remembered that at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the 27th day of October, anno Domini one thousand eight hundred and eighty-four, at the United States court-room in the city of Little Rock, Arkansas, the Honorable Henry C. Caldwell, district judge, presiding and holding said court, the following proceedings were had, to wit:

On November 17th, 1884, as follows:

WM. H. GAINES and WIFE } 634.
vs.
GEO. H. SMITH *et al.* }

Comes the defendants, by John McClure, Esq., their solicitors, and on motion of said solicitor leave is given said defendants
7 until the first Monday in December next to file answer.

And on December 1st, 1884, as follows:

WM. H. GAINES } 634.
vs.
GEO. H. SMITH. }

Comes the defendant, by John McClure, Esq., his solicitor, and files herein his answer; which answer is as follows:

In the Circuit Court of the United States, Eastern District of Arkansas. In Chancery.

WILLIAM H. GAINES and MARIA GAINES, His Wife, *vs.* JOHN KUBLER and GEORGE H. SMITH. } Answer of Geo. H. Smith.

Now comes Geo. H. Smith, one of the defendants herein, and, by leave of the court first had and obtained, for answer to the complaint filed herein, says:

That he admits in the year 1851, in pursuance of the instruction of the Secretary of the Interior, Maria Gaines, Albert Belding, Henry Belding, and George Belding, heirs-at-law and legal representatives of Ludovicus Belding, was allowed to enter under the pre-emption laws of the United States the southwest quarter of section thirty-three, in township two south, range nineteen west, but defend-
8 ants state that said direction and order of the Secretary of the Interior was wholly unauthorized by law, as the said quarter section aforesaid was, by an act of Congress approved April 20th, 1832, specially and specifically reserved from sale or entry and left to the future disposition of the Congress of the United States.

Defendant further states that the certificate — entry, issued at the time and manner set forth in the complaint herein, was issued for the sole and single purpose of placing the said Maria Gaines, Albert Belding, Henry Belding, and George Belding in a proper position to assert their rights in the courts and contest the adverse claims of Henry M. Rector, John C. Hale, and other claimants thereto.

That the said certificate was issued with the full, direct, and perfect understanding that no application for a patent would be made thereunder; that said entry was to remain subject to the same power of revision and control by the General Land Office and the defendant as might be exercised over ordinary entries, and that said entry or the certificate thereof was not in any manner to affect the right or claim of the United States to said land; all of which will more fully appear by Exhibit "A," hereto attached, marked "A," and made a part hereof.

Defendant further states that the certificate of entry so issued as aforesaid was, in the year 1860, cancelled, revoked, and annulled by the proper officer of the Interior Department; that the action of the officer aforesaid in cancelling said entry and certificate was approved and confirmed by the supreme court of the State of Arkansas in the case of Wm. H. Gaines *et al. vs.* Henry M. Rector and John C. Hale, at the December term of 1870, by the Court of Claims in March of 1875, and by the Supreme Court of the United States in the year 1876, all of said courts holding that the land described in said certificate of entry was not subject to entry by the persons in said certificate mentioned.

Defendant is not advised and has no *gnowledge* as to whether the said Maria Gaines and the other Belding heirs paid the United States two hundred dollars for said land or whether said sum of money

was advanced by the complainants or whether the United
9 States still retains said sum of money; and defendant says that if said facts are deemed material the defendant demands strict proof of the same.

Defendant denies that at the time of said entry a small portion of said land was occupied by Mrs. Lydia Belding, widow of Ludovicus Belding, if by said allegation it is intended to allege that the said Lydia Belding occupied or improved any portion or part of lot two, in block seventy-seven, in the town of Hot Springs aforesaid, either at the time of making said entry or at any time between said date and filing of the complaint herein; and defendant avers that neither the said Lydia Belding or the complainant at any time were in the possession of said lot or at any time made improvements thereon.

Defendant states that on the 2nd of April, 1831, the said Ludovicus Belding, through whom the plaintiffs claim title, made and executed the following instrument in writing and delivered the same to one John C. Hale, to wit:

"Know all men by these presents that I, L. Belding, of the county of Hot Springs and Territory of Arkansas, do acknowledge and make known that I, the said Belding, did lease the buildings and improvements at the Hot Springs of John Purciful and acknowledge his right to said improvements at the said Hot Springs, and that I have now, before this date, leased the said buildings and all the improvements, privileges (except three cabins, two of which are not mine) to Richard C. Hawkins until the 1st day of January, 1833, and at which time I, the said Belding, agree and bind myself to deliver all and every part of the buildings and improvements at the said Hot Springs that I have or ever had, in the same condition as Hawkins is to deliver the same to me, unto John Perciful, if he demands the same, and I have no pretensions to the improvements at the said springs except under the claim of John Perciful.

"Given under my hand this 2nd April, 1830.

"L. BELDING."

Defendant is informed and believes, and so charges the truth to
10 be, that it was because of the production of the above-recited writing that the Secretary of the Interior cancelled, annulled, and set aside the entry and certificate of entry so issued as aforesaid.

Defendant admits that William H. Gaines brought suit in the Hot Springs circuit court and recovered a judgment against the defendants named in said suit for the possession of the southwest quarter of section thirty-three aforesaid; that said judgment was afterwards affirmed by the supreme court of the State of Arkansas and by the Supreme Court of the United States; but defendant denies that the said William H. Gaines was put into the possession of said quarter section of land by the sheriff of Hot Springs county by virtue of a writ of possession issued upon the judgment aforesaid; and defendant denies that the said William H. Gaines and Maria Gaines, his wife, remained in or was ever in peaceable possession of the southwest quarter aforesaid or lot two aforesaid until the 1st day

of June, 1876, or at any time prior to said date, within the twenty years mentioned in said complaint.

Defendant alleges that prior to and before the execution of the mandate of the Supreme Court of the United States that Henry M. Rector and John C. Hale, both of whom were claimants to the quarter section of land aforesaid, and one or more of whom were defendants in the action wherein the said William H. Gaines recovered the judgcent aforesaid, commenced a suit in equity in the Hot Springs circuit court, the object and prayer of which was, among other things, to obtain a perpetual injunction, commanding the said Gaines to desist and refrain from proceeding to have any writ of restitution or writs of possession or mandate of any kind of and concerning the possession of the land aforesaid issued or in any manner executed until the final determination of said suit in equity; that the said Gaines be perpetually enjoined, and that an interlocutory injunction be granted, in accordance with the prayer of said bill, restraining the execution of the mandate aforesaid; and an interlocutory injunction was granted in accordance with said prayer, which continued in force until said suit was afterwards dismissed from the docket of the Supreme Court of the United States, after the affirmation of the case in the Court of Claims, wherein the title to
11 the land aforesaid is declared to be in the United States, and no writ of possession was ever executed, as alleged in the complaint herein.

That in the suit instituted by the said Henry M. Rector and the said John C. Hale against the said William H. Gaines as aforesaid, the certificate of entry and the entry made by order of the Secretary of Interior having been cancelled by said Secretary in June of 1860 as having been improvidently and erroneously issued, the supreme court of the State of Arkansas, at the December term of 1870, adjudged and determined that the judgment at law theretofore obtained by the said Gaines as aforesaid and all claim of title made by the said Gaines and wife were decreed to be void; that the said Gaines and wife had no title to said land aforesaid; but under a statute of Arkansas which declares "where an improvement has been made on public land of the United States, whether the lands have been surveyed or not, and where any other person than those to whom the right has been given by the preceding claims of this section is in the possession of such improvements" an action of ejectment may be maintained, the last-mentioned court held the said Gaines and wife had a possessory right and title to the respective improvements made by them as against the parties to said suit, and it was decreed that each and all of the parties to said suit be decreed to have title to their respective improvements made by them as against each other, and that each and all of the parties to said suit be enjoined from enforcing the judgments at law.

That the Congress of the United States, prior to the rendition of the last-mentioned decree, in the year 1870, passed an act entitled "An act in relation to the Hot Springs of Arkansas," conferring upon the Court of Claims jurisdiction to hear and determine the rights of persons claiming title to the land aforesaid, as well as between said

claimants and the United States, and at the times hereinafter mentioned the said Gaines had availed himself of the provisions of said act, and his claim to said land was then pending in said Court of Claims undisposed of; and at the time aforesaid the cause in equity instituted by the said Rector and Hale against said Gaines and wife was pending in the Supreme Court of the United
12 States upon a writ of error from the decree of the supreme court of Arkansas and undermined.

That on the 1st day of October, 1870, the plaintiff leased a lot or tract of ground to one John Kubler, which said tract is described as follows, to wit: "Commencing ten feet south of shoemaker's stop and running twenty feet front on west side of street, back to Sumpter's fence, for the space and term of three years, or until the title to the Hot Springs quarter section is settled."

Defendant denies that said lease was for the term of one year or executed in the year 1874, to be renewed at the election of the lessee from year to year until the title to the Hot Springs quarter section of land was settled.

Defendant denies that said lease provided that all buildings and improvements erected on said lot by the lessee might be removed therefrom during the continuance of the lease or within thirty days thereafter.

Defendant denies that said lease provided that no buildings or improvements erected could be removed while said rent or any part thereof remained due and unpaid.

Defendant denies that it was provided in said lease that the lessor should have a lien on all buildings and improvements to secure the rent.

Defendant admits that the said Kubler went into the possession of the leased premises under said lease, but defendant denies that on the 24th day of April, 1876, the said lessee and his assigns owed the lessor rent in the sum of three hundred and eleven dollars and eighty-five cents or any other sum.

Defendant admits that the buildings and improvements made upon the leased premises by the said Kubler and defendant were not removed within thirty days after the expiration of the lease, and denies that by the provisions of said lease in default of removal the buildings and improvements were to become the property of the plaintiff. On the contrary, the defendant avers that at the expiration of the lease the said buildings and improvements
13 became the property of the United States as well as the land on which they were situate.

Defendant denies that the tract or lot of ground described in said lease attached to the complaint herein is now known as lot two, in block seventy-seven, and denies that the land described in said lease is identical with lot two, in block seventy-seven.

Defendant avers that at the time said plaintiff and the said Kubler entered into the lease aforesaid that the plaintiff and the said Kubler well knew that the judgment which the said plaintiff had obtained in the action of ejectment had been set aside, annulled, and held for naught by the supreme court of the State of Arkansas, and

that said plaintiff had been perpetually enjoined from enforcing said judgment; that the lessor and the lessee well knew the title to the leased premises was in dispute and litigation and then undetermined.

That the plaintiff and the said defendant in the making of said lease entered into the same with the full understanding that the fee in said leased premises was in dispute and claimed by the United States and other parties; that it had been adjudicated by the supreme court of the State of Arkansas that the title to the leased premises was in the United States and not in the plaintiff; that the plaintiff had been adjudicated only a right of possession to such improvements as he had made on said land as against the parties to said suit; that the Congress of the United States had passed an act conferring jurisdiction of — Claims to adjudicate the question of title to said land; that the cause was then pending in said court undetermined, and it was not then known when the respective rights of the claimants could be determined or in whose favor said court would determine; that it was fully contemplated and understood by and between the plaintiffs and said defendant that if the Court of Claims or the Supreme Court of the United States should render a decision averse to the claim of the plaintiff that said determination should fix the date of the determination of said lease, and that the relation of landlord and tenant would then cease and determine, and that said defendant should thereafter attorn to
14 whoever said leased premises might be adjudicated by the court aforesaid.

That on the 24th day of March, 1875, the Court of Claims adjudicated and determined the plaintiffs had no claim or title to the land aforesaid, and that the same was the property of the United States.

That from and after said adjudication the said defendant treated and regarded said lease at an end and the leased premises as the property of the United States, and declined to pay rent to the plaintiff lest he would be compelled to again pay rent to the United States from the date of the rendition of the decree by the Court of Claims if the Supreme Court of the United States should upon final hearing of said cause affirm said decree.

Defendant states that the decree or judgment of the Court of Claims determining that the United States was the owner of said land and that the plaintiff was not was, by the Supreme Court of the United States, on the 24th day of April, 1876, in all things affirmed, and defendant subcits that by the terms of the lease aforesaid it terminated by its own terms on the 24th day — March, 1875, and that the relation of landlord and tenant ceased upon that day, and that the plaintiff cannot demand or recover of the said defendant or his assigns rent for the leased premises after the rendition of the decision by the Court of Claims, to wit, March 24th, 1875; that the United States was and is entitled to rent from that date and has not surrendered said right, by assignment or otherwise, to the plaintiff.

Defendant states that after the affirmation of the judgment or decree of the Court of Claims by the Supreme Court of the United

States one A. O. Morgan was appointed receiver by said Court of Claims, under the provisions of the act of Congress conferring jurisdiction on said court, to rent and lease the land and improvements upon said land mentioned in said decree, and included in which was and is the land mentioned in the complaint.

That the Court of Claims issued certain instructions to govern said receiver, a copy of which is hereto attached, marked Exhibit "B," and made a part hereof; that among said instructions is the following, to wit:

"IV. The receiver shall in all cases require all persons occupying any part of the lands described in said decree to attorn to the United States and to execute and accept from him leases of the premises occupied by them in such form as he may prescribe and with such security for the payment of the rent as he may require; and if any such person shall refuse or neglect so to attorn or to execute and accept from him such lease or to give such security the receiver shall forthwith report the fact to the Attorney General of the United States and also to this court and shall take and institute such proceedings to evict such occupant as the Attorney General shall direct; and the receiver shall in no case let or rent any portion of the said lands or improvements to any person who shall have attempted in any respect to resist or obstruct, or shall have aided, incited, or counselled others to resist or obstruct, his authority under said decree and this order, or who shall have refused or unreasonably delayed *or* to give any security required by the receiver."

Defendant states that under the order to said receiver the defendant Kubler had but one of two things to do—that is, attorn to the United States and pay rent in accordance with the order of said court or leave the premises; that the said Kubler attorney to the United States until the 1st day of October, 1876.

Defendant states that on the 12th day of September, 1876, John Kubler, one of the defendants herein; Christine Kubler, his wife; Godfrey Kubler and Louisia Kubler, his wife, by deed of that date, conveyed to the defendant by quitclaim deed all their right, title and interest, as well in expectancy as in possession, in and to that certain tract of land, situate in the city of Hot Springs, upon the Hot Springs reservation, in Garland county, State of Arkansas; more particularly described as follows, to wit:

That part of the southwest quarter of the southwest quarter of section thirty-three, in township two south, range nineteen west, on the Hot Springs reservation, beginning four chains and sixty-one links south, 290 east, where the southern boundary line, running east and west, crosses the line of section thirty-two and three, in said township and range, of the private survey of Francis Langlois' survey, known as the New Madrid claim, thence east along the north side of the German house, about one foot therefrom, one hundred and two feet and four inches, to the west side of Main street, to the northeast corner of the Kubler house porch; thence west, along the west side of Main street, forty-four links south 1° east twenty-nine feet and three inches to the southeast corner; thence west 1° south nine-six feet to a plank fence; thence north 16° west to the

place of beginning, containing nearly seven one-hundredths of an acre. A copy of said deed is hereto attached, marked Exhibit "C."

That at the time of the conveyance aforesaid the plaintiff was not making any claim to said land described in said conveyance, but recognized the fact that the United States was the owner thereof, and was himself attorning to the United States as a tenant and paying rent to the receiver aforesaid upon that portion of said land which he, the plaintiff, had built and improved upon.

Defendant states that at the time of the purchase of the premises aforesaid it had been adjudged and determined by the Supreme Court of the United States that the United States was the sole and rightful owner of said land, and that the same was held by it subject to future disposal by the Congress of the United States, as well as the improvements thereon, and that the United States, through the agency of a receiver, was renting the same and receiving rents thereon and therefrom.

Defendant at the time of making said purchase had reason to believe and did believe that when the Congress of the United States came to provide for the disposal of said land that it would not wholly disregard the fact that the occupants and settlers upon said land who had made valuable improvements thereon were in equity entitled to some consideration, and that in making such disposition some
17 such rights as are given by the town site would be extended.

That in the month of June, 1876, he took and accepted a lease from the said receiver for the premises aforesaid for the period of one year at the rental of three hundred and sixty dollars per annum, and continued to pay such rent until by act of Congress the further collection of rent was remitted, and that during the period aforesaid the plaintiff also attorned to and paid rent to said receiver upon the land and property which he had built upon and improved.

That on the 3rd of March, 1877, the Congress of the United States passed an act entitled "An act in relation to the Hot Springs reservation, in the State of Arkansas," authorizing the President to appoint three persons who were to constitute a board of commissioners, who were subsequently appointed, who were empowered and authorized to lay the land comprising said reservation into convenient squares, blocks, lots, avenues, streets, and alleys, the lines of which were to correspond with existing boundary lines of occupants of said reservation as near as may be consistent with the interest of the United States.

And it was further provided by said act that said commissioners should show by metes and bounds, on a map by said act to be made, the parcels or tracts of land claimed by reason of improvements made thereon or occupied by each and every such claimant and occupant on said reservation, and to finally determine the right of each claimant or occupant to purchase the same or any portion thereof at the appraised value, which the said commissioners might affix thereto.

That from the 24th of March, 1875, until the passage of the act of March 3rd, 1877, aforesaid the plaintiff abandoned all claim to the

leased premises aforesaid; that upon the passage of said act the plaintiff's hopes were again aroused to the belief that he might avail himself of the provisions thereof as an occupant or claimant under the terms of said act and in this manner acquire from the United States a title to said land based upon the same demand and claim which the Supreme Court of the United States had
18 *had* adjudicated against, and falsely pretended to have a claim upon and to the land leased as aforesaid, presented a petition to the commissioners appointed under the act of March 3rd, 1877, aforesaid, claiming to be entitled to the same under the provisions of said act.

That the only proof offered by said plaintiff to show that he came within the terms and provisions of said act was the lease executed between the plaintiff and said Kubler. Defendant states that at the time of the passage of the act of 1877 aforesaid the question as to what persons were included and intended to be included under the words claimant or occupant was fully discussed, and stated to be as follows: That the word "claimant" meant one who had made improvements but who did not live therein or thereon, and the word "occupant" was defined to mean the owner of the house and the improvement who lived therein.

That the proof submitted before said commissioners showed that the leased premises aforesaid were improved and built upon by the said defendant Kubler prior to the rendition of the decree of the Supreme Court of the United States aforesaid; that when said defendant entered upon it the land was in a state of nature and no improvement thereon, and that none were afterwards put thereon by the plaintiff.

That the defendant petitioned the said commissioners to award the premises to defendant, and that said commission did award the same to the defendant, and defendant denies that in making said award said commissioners misconstrued the law applicable to the facts in relation thereto.

Defendant hereto attaches a copy of his said petition to said commissioners and the evidence taken by and before them and makes the same Exhibit "D," and makes it a part hereof.

The said commissioners, under the provisions of the act of March 3rd, 1877, were required to lay out said reservation aforesaid into squares, lots, blocks, avenues, and alleys, the lines of which lots were to correspond with the existing boundary lines of occupants of said reservation, and show by metes and bounds the tracts or
19 parcels of land claimed by reason of improvements made thereon, and to hear any and all evidence offered by such claimant and occupant and the United States; that the jurisdiction of said commissioners to adjudicate as to the possessory right of occupation as between persons claiming the same lot, either as claimant or occupant, depended upon the filing of a petition by one or more of such occupants or claimants, with or before said commissioners, claiming said lot and showing that their claims issued on or before the 24th day of April, 1876, and the nature and character of the improvements made; that Congress by said act in-

tended to make the persons beneficiaries who actually owned the buildings and improvements made upon said lots, independent and irrespective of the relation — and tenant which had existed prior to April 24th, 1876; that under said act the right to purchase any of said lots depended wholly upon the determination of the fact of whether any one of the claimants or occupants had improved the lot in controversy and whether the claimant was then the owner of such improvement; that the plaintiff produced before said commissioners no proof of ownership of the improvements on said lot and no proof of ever having occupied the same, but contented himself by introducing in evidence a lease which authorized the tenant to build and remove the buildings at the termination of the lease or within thirty days thereafter; that the defendant showed by evidence before said commissioners that the lot aforesaid was in a state of nature at the time he entered thereon, and that he made the improvements thereon; that he owned the said improvements, and that they were made prior to April 24th, 1876, and defendant denies that the said commissioners erred or misconstrued the law applicable to the state of facts or in awarding the right to purchase said lot to the defendant.

Defendant states that under the provisions of the act of Congress of April 20th, 1872, reserving the quarter section of land aforesaid from entry and sale, the same was reserved "for the future disposal of the United States, not to be entered, located, or appropriated for any other purpose whatever;" that the Congress of the United States, for the purpose of disposing of said land, passed the act of March 3rd, 1877; that by the ninth section of said act it is provided that said commissioners shall file in the office of the Secretary of the Interior the map and survey by said act provided, with the boundary lines of each claim clearly marked thereon and with each division and subdivision traced and numbered, accompanied by a schedule showing the name of said claimant and each lot and parcel of land and the appraised value thereof; also the evidence taken by them respecting the claimants' possessory right of occupation to any portion of the Hot Springs reservation and their finding in each case.

Defendant states that the said commissioners in every respect complied with the provisions of the section aforesaid, and that said map, schedule, evidence, findings, and survey became and was a public record; that after the filing of the map, schedule, evidence, findings, and survey as aforesaid the Congress of the United States, on the 16th of June, 1880, passed an act entitled "An act for the establishment of titles in Hot Springs and for other purposes," the first section of which is as follows:

"That any person, his heirs or legal representatives, in whose favor the commissioners appointed under the acts of Congress of 1877 and 1878 relative to the Hot Springs of Arkansas have adjudicated shall have the sole right to enter and pay for the amount of land the commissioners may have adjudged him entitled to purchase," &c.

Defendant avers that independent and irrespective of whether

the commissioners erred either as to law or fact in finding who under the act of March 3rd, 1877, was entitled to purchase said land, that the act of June 16th, 1880, gave to the persons mentioned in the schedule and findings required to be filed by the ninth section of the act of March 3rd, 1877, the sole right to purchase under and pay for the lands or lots which the said commissioners had adjudged them entitled to; that said act of June 16th, 1880, in effect
21 does and was, as the title to said act declares, intended to establish titles to the Hot Springs property in the persons named in the schedule and findings aforesaid, and is confirmatory of the awards made by said commissioners and an absolute disposition of the lots and parcels of lands aforesaid to the persons named in the schedule filed in the office of the Secretary of the Interior by said commissioners under the provisions of the ninth section of the act of March 3rd, 1877.

Defendant states that — the schedule and findings so filed as aforesaid that lot 2, in block seventy-seven, was awarded to the defendant and under the act of June 16th, 1880, he was granted the sole right by Congress to purchase the same; that at the time of granting said right no vested rights of any kind, character, or description had inured to or in favor of the plaintiff; that Congress had the right and power to grant the right to purchase said lot to him, and did so by the act of June 16th, 1880.

That subsequently and within the time prescribed by law the defendant paid to the United States the amount required by law, and that afterwards, to wit, March 24th, 1881, the same was patented to him by the United States.

Defendant states that he went into possession of the said lot two at a time when the title to said land was in the United States, to wit, on the 1st day of October, 1876, and at a time when the plaintiff made no claim to said land and before the passage of the act of March 3rd, 1877, under the purchase from John Kubler, and has been holding the same openly, adversely, and continuously down to the present time as against all persons save the United States, and defendant denies that he went into possession of said lot under the lease mentioned and set forth in the complaint herein, and avers that the plaintiff had nothing to which said lease could attach; that either the said Kubler was entitled to possession of said lot and the improvements thereon under said lease or the defendant, and neither could the plaintiff have evicted or put the defendant in possession.

22 Defendant states that a period of more than seven years had elapsed between the commencement of this suit and the 1st day of October, 1876, the day the defendant accepted a leave from the United States, and that by the law of the State of Arkansas this action is barred; that more than seven years have elapsed since the defendant attorned to and recognized the United States as his landlord, and that during the period aforesaid, to wit, from the 1st day of October, 1876, until the 23rd day of May, 1884, the date of the commencement of this action, during all of which time the defendant has never recognized the plaintiff as his landlord or attorned to him,

but, on the contrary, during all this period aforesaid has had and held the lot aforesaid adverse-, notoriously, and openly as against all persons, and defendant says that the plaintiff hath not at any time within said seven years enstituted any suit or suits at law or equity to maintain a claim to said lot two aforesaid, and defendant says that the said claim of the plaintiff is stale and the plaintiff guilty of laches.

Defendant denies that at the time he purchased the said lot two from said Kubler that he knew the terms and conditions of the lease between the said Kubler and the plaintiff, and avers that at the time he purchased from said Kubler the said Kubler was and for some time prior thereto attorning to and paying rent to the United States for the lot aforesaid and the improvements thereon.

Defendant denies that the testimony taken before said commission clearly showed that the defendant acquired his possession of the lot aforesaid under the lease made by the plaintiff.

Defendant avers that he purchased the improvements of the said Kubler and the right which Kubler might thereafter be adjudged thereto, in either law or equity, or such as might thereafter be granted by the Congress of the United States; that he never has in any manner recognized the said Gaines as having title to said lot; that no covenant ever existed between Kubler and the plaintiff to restore possession, and that none ever existed between the de-
23 fendant and the plaintiff to restore possession, and defendant denies that he is trustee holding said lot for the use and benefit of the plaintiff.

Defendant states that the question before said commission was not one of ownership or possession or the right of possession, but was whether the said Gaines or the defendant under the act of March 3rd, 1877, was entitled to be adjudged the right to purchase said lot two at the appraised value by virtue of being a claimant or occupant within the terms of said act.

Defendant states that lot two aforesaid, which was awarded him by said commissioners and afterwards confirmed to him by the act of June 16th, 1880, was and is thirty-two feet and two-tenths inches in width fronting on Central avenue; that the land leased to the said Kubler by the plaintiff was only twenty feet in front and ran back to the Sumpter fence—a distance of about fifty feet; that the Hot Springs Commission widened the street on which said leased twenty feet fronted and in doing so cut off twenty-three feet off of the front end of said lot, leaving only twenty-seven feet of the leased premises in length by twenty feet in width or frontage on the street; that in laying out the land aforesaid into blocks and lots the said commission added sixty-three feet to the rear end of said twenty feet, leased as aforesaid, by twenty in width, and a strip along the south side twelve feet and two-tenths inches in width, ninety feet in depth, making the said lot two thirty-two feet and two-tenths inches in width and ninety feet in depth; that the plaintiff never had possession of the sixty-three feet of ground lying immediately behind the property leased to Kubler nor of the strip of ground twelve feet and two-tenths inches in width running back ninety feet and never at

any time made any improvements thereon; that defendant has been in possession of said property under color of title, holding the same openly and adversely, for more than seven years before the commencement of this suit and the plaintiff's demand is barred by the statute of limitation.

Defendant denies that the plaintiff ever at any time paid
24 taxes upon the lot or tract of land now known as lot two, in block seventy-seven, or upon the improvements thereon, and states that the land constituting the Hot Springs reservation was not appraised or assessed for taxation for the reason that it was regarded as the property of the United States and not subject to taxation; that the buildings and improvements on said land were assessed for taxation to the person owning the same; that the said Kubler paid the taxes on the buildings and improvements made and placed on said lot up to the sale to defendant, and that defendant has paid the taxes upon the improvements aforesaid up to the present time and upon the lot itself since the commissioners awarded said lot to him.

Defendant sates that the buildings which were erected upon said lot at the time he purchased from said Kubler were in the spring of 1878 entirely destroyed by fire; that the commissioners at the time of said fire had not declared in whose favor or to whom said lot would be awarded; that said commissioners made and issued an order authorizing the persons who owned the houses in the burnt district to rebuild on the same premises; that, in pursuance of such authority, defendant did rebuild upon the lot aforesaid at great cost, to wit, $1,500.

That the plaintiff well knew of said order allowing parties to rebuild, and well knew that defendant was rebuilding and interposed no objection and took no step to prevent the same.

That after the award by the commissioners of said lot to the defendant, October 7th, 1879, the plaintiff expressed himself as being contented and satisfied with the awards made by said commissioners, stating that they were just and equitable and he would abide by them; that at a time when a bill was pending before Congress looking to the granting of an appeal or review of the findings and awards made by said commission the plaintiff, so the defendant is informed and believes and so charges the truth to be, furnished and expended large sums of money to prevent and defeat said legislation; that upon hear-ing of the decision of the Supreme Court
25 of the United States in the case of Rector *vs.* Gibbon *et al.*, in the year 1884, the plaintiff suddenly changed front, believing that said decision has opened the way to give him title to property upon a pretended claim which had been pronounced against — by the supreme court of Arkansas, by the Court of Claims, and by the Supreme Court of the United States.

Defendant states that the whole foundation of the plaintiffs' claim is based upon a certificate of entry which has been cancelled, upon a judgment which he has been perpetually enjoined from enforcing, a lease which by its terms was to terminate when the title to said land was settled; that it was settled adversely to him in March of

1875, and this court is now asked to declare that the relation of landlord and tenant existed between the plaintiff and the defendant at and during a period the defendant was attorning to the United States—in short, to declare that land which the Supreme Court of the United States declared belonged to the United States and which the Congress of the United States subsequently, by the act of June 16th, 1880, granted to the defendant belongs to the plaintiff, because he leased it to Kubler when he had no title to it.

Defendant prayr said bill be dismissed with costs and other proper relief.

JOHN McCLURE,
For Defendant.

(Endorsed:) Filed December 1st, 1884. Ralph L. Goodrich, clerk.

And on the same day as follows:

WM. H. GAINES and WIFE
vs.
GEO. H. SMITH *et al.* } 634.

The plaintiffs, by M. W. Benjamin, Esq., their solicitor,
26 ask leave to amend their complaint by interlineation, which is granted; and thereupon said amendments are made.

And on January 5th, 1885, as follows:

WM. H. GAINES and WIFE
vs.
GEO. H. SMITH *et al.* } 634.

Come the complainants, by M. W. Benjamin and R. G. Davies, Esqs., their solicitors, and file herein their replication to defendants' answer; which replication is as follows:

United States Circuit Court, Eastern District of Arkansas.

WM. H. GAINES and WIFE
vs.
GEO. H. SMITH *et al.* }

The said plaintiffs say their bill is true and the defendants' answer as set forth is not true, and this they are ready to prove.

M. W. BENJAMIN,
R. G. DAVIES, *Solicitors.*

(Endorsed:) Filed January 5th, 1885. Ralph L. Goodrich, clerk.

27 And on February 2nd, 1885, as follows:

WM. H. GAINES and WIFE
vs.
GEO. H. SMITH *et al.* } 634.

And, the said complainants having obtained leave of the court to file an amended complaint herein, leave is hereby granted the said

defendants herein thirty days from and after the date of this order to file an amended answer.

UNITED STATES OF AMERICA,
Eastern District of Arkansas.

Be it remembered that at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the 12 day of April, anno Domini one thousand eight hundred and eighty-six, at the United States court-room, in the city of Little Rock, Arkansas, the Honorable Henry C. Caldwell, district judge, presiding and holding said court, the following proceedings were had, to wit:

On April 20th, 1886, as follows:

WM. H. GAINES and WIFE
vs.
GEO. H. SMITH *et al.* } 634.

Come the complainants, by Benjamin and Davies, their solicitors, and come the defendants, by —— ——, their solicitor, and this cause is submitted to the court upon the pleadings and evidence, and by agreement of parties it is ordered that the complainants have fifteen days and the defendants thirty days thereafter in which to file abstracts, and thereafter the complainants to have ten days and the defendants ten days in which to file briefs, and five
28 days thereafter be given for reply. It is further ordered that each party serve upon the opposing party copies of abstracts and briefs.

UNITED STATES OF AMERICA,
Eastern District of Arkansas.

Be it remembered that at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the 24th day of October, anno Domini one thousand eight hundred and eighty-seven, at the United States court-room, in the city of Little Rock, Arkansas, the Honorable Henry C. Caldwell, district judge, presiding and holding said court, the following proceedings were had, to wit:

On November 10th, 1887:

WILLIAM H. GAINES and MARIA GAINES, His Wife;
vs.
GEORGE H. SMITH and JOHN KUBLER. } 634.

Now, on this day, this cause coming on to be heard upon the complaint of plaintiffs, the answer of defendant G. H. Smith and the replication to said answer, and the evidence, the plaintiffs dismiss said cause as to the defendant John Kubler; and the court having heard the argument of counsel and being now sufficiently advised in the matter as to the proper decree to render herein, the court finds that the board of commissioners mentioned in said complaint

by error and mistake of law awarded the *lot* to purchase lot two (2), in block seventy-seven (77), of the Hot Springs reservation, in the city of Hot Springs, Garland county, Arkansas, to George H. Smith, and issued to the said George H. Smith a certificate of award, and that in accordance with said erroneous ruling a patent has been issued improperly to said George H. Smith; and the court is of the opinion that the said George H. Smith holds said lot and patent
29 for the sole use of said William H. Gaines and Maria Gaines; that complainants have not been guilty of laches, and their action is not barred by the statute of limitation. It is therefore considered, ordered, and adjudged and decreed that all the right, title, interest, and estate of the said George H. Smith in and to said lot be, and the same is hereby, divested out of said defendant and vested in plaintiffs and their heirs and assigns forever; and defendant prays an appeal, which is granted by the court; and it is further ordered that this cause be referred to N. W. Cox, special master of this court, who is directed to ascertain and report to the court at its next term:

1st. The value of the rent of said lot from the date of the institution of this suit and the rental value thereof under the lease from January 1st, 1882, to institution of suit.

2nd. The taxes paid since said award.

3rd. The value of the improvements now upon said lot.

And said master may examine witnesses touching said matter, and shall reduce the same to writing and report their testimony so taken to the court.

And it is further ordered that all questions of law touching the several matters herein referred to the master be, and the same are, reserved until the coming in of his report, and this cause is reserved for further direction.

And thereupon defendant prays and appeal to the Supreme Court, which is allowed, and the value of the property is shown to be six thousand dollars.

UNITED STATES OF AMERICA,
Eastern District of Arkansas.

Be it remembered that at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the 9th day of April, anno Domini one thousand eight hundred and eighty-eight, at the United States
30 court-room, in the city of Little Rock, Arkansas, the Honorable Henry C. Caldwell, district judge, presiding and holding said court, the following proceedings were had, to wit:

On April 19th, 1888:

WM. H. GAINES and WIFE
vs.
GEO. H. SMITH *et al.* } 634.

Comes N. W. Cox, Esq., master herein, and files his report; which report is as follows:

In the U. S. Circuit Court, Eastern Dist. of Arkansas.

WILLIAM H. GAINES and MARIA GAINES, His Wife,
vs.
GEORGE H. SMITH and JOHN KUBLER. } 673.

To the honorable circuit court of the United States for the eastern district of Arkansas:

In compliance with the decree of this honorable court made November 10th, 1887, I have inquired into the matters therein required, and the result thereof will be found below.

The parties did not present testimony strictly in accordance with the requirements of the decree herein, but in accordance of the decree of this hon. court as modified, made after the taking of this decree, in other and similar cases. The testimony for the plaintiffs and the agreement of the attorneys for both parties as to the statement of the defendants are hereto attached.

I found from testimony and the plats of the city of Hot
31 Springs that the width of the lot in controversy—lot No. 2, block 77—was 32 feet wide.

I further find from the lease between the parties to the original lease that the rent of said lot was to be $10.00 per front foot per annum.

The rent thereon from the date of the award, Dec. 9th, 1879, to the date of the filing of the complaint herein, May 23rd, 1884, 4 yrs. 5 mos. and 14 days, at $10 per front foot		$1,422 21
Interest on same to April 18th, 1888, at 6%, 6 yr-. 1 mo. 12 days		521 95
Rent from May 23rd, 1884, to date of decree, November 10th, 1887, 3 y. 5 m. 17 d., at $12.50 per front foot per annum		1,385 53
Int. on same, average 2 y. & 2 mo., at 6 %		180 00
Rent on improvements since decree to April 18th, 1888, at $65 per mo.		342 50
Making		$3,852 29

CR.

By—		
Value of improvements, present valse	$1,700	
" excavation and c. for building	250	
Int. on same to April 18th, '88	135 00	
Raising building to grade by order city council	225 50	
Interest on same	54 00	
Sewer tax	135 00	
Interest on same	10 30	
Curbing and sidewalk	71 35	
Taxes, city, county, State 605 75		
Less 15 % on $494.25 for scrips 72 13		
	533 35	

Interest, average 3½ years, on $469.62	$88 60	
Amount paid Government for lot	282 00	
Int. on same from March 20, '80, to April 18, '88	136 77	
		$3,622 14
Balance in favor pl'ffs		$230 15

Respectfully submitted.

N. W. COX,
Special Master.

32

1881, taxes, county, State, and city	$78 75	
1882, " " " "	87 50	
1883, " " " "	88 00	
1884, " " " "	76 00	
1885, " " " "	76 00	
1886, " " " "	64 00	
		$558 25
1881, city tax, Richardson	22 50	
1882, " " Butterfield	25 00	
		47 50
1880, U. S. Land Office; patent issued March 24th, 1881		282 00

There are numerous small expenditures for which I have no receipts, such as half of water rate, cleaning W. C., watchman, locks, keys, &c.

	Valuation of buildings and improvements made upon lot No. 2, block 77, and destroyed by fire, 1878	$1,400 00
1878.	Value of buildings and improvements made since the fire, painting, papering, &c.	2,000 00
	Estimated cost of excavating and preparing lot for building, cleaning two old privy vaults, wooden sewer, &c.	250 00

Cost of raising the buildings as caused by the city attorney, the grade of the street, &c., repairs, &c., made necessary thereby.

1883.				
Jan.	28th.	Mr. Sloan	$30 00	
Feb.	23rd.	"	125 00	
	24th.	"	20 00	
March	31st.	"	50 50	
				$225 50
"	24th.	Mr. Sloan's workman	17 50	
Feb.	3rd.	Dwyer & Usher, rock pillars	11 00	

33

	1883.			
May	8th.	Burganer & Co.	$28 50	
		J. M. Longworth	35 60	
June	1st.	Burganer & Co.	61 00	
				$125 10
	1884.			
March	13th.	J. M. Pumphrey	9 40	
		Empress rock for sills	2 75	
"	25th.	Spears, 85; Price, 3.75—carpenters	8 75	
		Nails	35	
				21 25
July	9th.	Price & Co., carpenters, "wainsed"	11 50	
	18.	F. Bearden, paint	4 75	
	20.	Smithen & Dow	16 10	
		Burganer & Co.	9 30	
				41 65
	1885.			
		Sewer tax	40 00	
	1886.			
		Sewer tax	40 00	
Sep.	10th.	Nickerson sewer & W. C.	65 00	
		Lock and keys, &c.	1 00	
Oct.	1st.	Smithen & Dow	5 40	
Nov.	23rd.	Dawson, rep. roof	3 25	
				154 65
	1888.			
Jan.	30th.	Alduge & Taylor	28 35	
Feb.	15th.	Repairing, water, rep. tort (?)	1 25	
	27th.	Chimney stad., tort (?)	50	
April	14th.	S. Lively, curbing	28 80	
		Jinkisn, brass rods	75	
		S. Lively, sidewalk	42 65	

34

Feb.	24th.	Mr. Spaulding, lumber	12 85	
"	28th.	Jim, cleaning vault	11 00	
March	24th.	Mr. Pumphrey, lumber	12 30	
"	29th.	" "	13 80	
"	29th.	Mr. Ballentine, lumber	16 80	
"	30th.	Mr. G. Arnold, flues	8 40	
		Nails, &c.	2 50	
"	30th.	" "	6 00	
		Jim, cleaning yard	2 00	
April	10th.	Mr. Pumphrey, lumber	3 90	
May	30th.	Housley Bros., rep. valley	4 30	
April	10th.	Carpenters	4 75	
				127 10

(Endorsed:) Filed April 19th, 1888. Ralph L. Goodrich, clerk.

35 In the U. S. Circuit Court, East. District of Arkansas.

WILLIAM H. GAINES and MARIA GAINES, His Wife,
vs.
GEORGE H. SMITH and JOHN KUBLER.

Depositions of witnesses taken, by the agreement of parties in the above-entitled cause, at the office of Davies and Greaves, in the city of Hot Springs, before N. W. Cox, special master of the U. S. circuit court for the eastern district of Arkansas, in said cause, viz:

WM. H. GAINES, being introduced upon the part of the plaintiffs and duly sworn, says to—

Ques. 1. State your name, age, residence, and whether you are one of the plaintiffs in this cause or not.

Ans. My name is Wm. H. Gaines; of lawful age; residence, Hot Springs, and am one of the plaintiffs in this cause.

Ques. 2. What did you lease the lot in controversy at per front foot?

Ans. Ten dollars per foot.

Ques. 3. Has the property increased or decreased in value since that time?

Ans. Increased.

WM. H. GAINES.

A. B. GAINES, being introduced upon the part of the plaintiffs and duly sworn, says to—

Ques. 1. State your name, age, residence, and occupation.

Ans. My name is A. B. Gaines; age, thirty years; residence, Hot Springs; occupation, real estate.

Ques. 2. State if you are familiar with the rental value of the ground in Hot Springs since the date of the bringing of this suit, May 23rd, 1884.

Ans. I am.

36 Ques. 3. What is it per front foot upon lot two, in block seventy-seven, the lot in controversy in this cause, from that date to the date of the decree in this cause, November 10th, 1887?

Ans. About twelve and half dollars per front foot.

Ques. 4. What is the rental value of the ground with the improvements now and since that time?

Ans. Seventy-five dollars per month and perhaps one thousand dollars per year.

A. B. GAINES.

C. N. RIX, being introduced upon the part of the plaintiffs and duly sworn, says to—

Ques. 1. State your name, age, residence, and occupation.

Ans. My name is C. N. Rice; age, forty-five years; residence, Hot Springs; occupation, banker.

Ques. 2. State if you are familiar with the rental value of ground in Hot Springs since the date of bringing this suit, August 5th, 1884.

Answer. Somewhat so.

Ques. 3. What is it per front foot upon lot 2, block 77, the lot in controversy in this suit, from that date to the date of the decree in this cause, November 10th, 1887?

Ans. About twenty to twenty-five dollars per month.

Ques. 4. What is the rental value of the ground with the improvements now and since that time?

Ans. Sixty-five to seventy dollars per month.

CHAS. N. RIX.

P. J. LEDWIDGE, being introduced upon the part of the plaintiff and first duly sworn, says to—

37 Ques. 1. State your name, age, residence, and occupation.

Ans. My name is P. J. Ledwidge; age, — years; residence, Hot Springs, Arkansas; occupation, contractor and builder.

Ques. 2. What is the present value of the improvements on lot 2, block 77, city of Hot Springs?

Ans. Seventeen hundred dollars.

P. J. LEDWIDGE.

—— VAN PATTEN, being introduced upon the part of the plaintiffs and duly sworn, says:

Ques. 1. State your name, age, residence, and occupation.

Ans. My name is S. P. Van Patten; age, thirty-three years; residence, Hot Springs, Ark.; occupation, architect.

Ques. 2. State what is the present value of the improvements on lot 2, in block 77, city of Hot Springs.

Ans. Seventeen hundred dollars.

S. P. VAN PATTEN.

It is agreed by counsel that the annexed bill, marked "A," presented by defendant Smith, contains the items of expenditures made by said Smith in and about the improvements on lot 2, block 77, in the city of Hot Springs, Arkansas, as therein stated.

JOHN McCLURE,
For Smith.
R. G. DAVIES,
For Plaintiffs.

38 And on the final hearing the following depositions & proofs were read:

(Here follow four maps marked pp. 39, 40, 41, & 42.)

43 DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., —— —, 188–.

I, N. C. McFarland, Commissioner of the General Land Office, do hereby certify that the annexed copy of petition No. 784, before the Hot Springs Commission, testimony submitted in support of same, and the finding of the commission are true and literal exemplifications from the originals on file or on record in this office.

United States General Land Office Seal.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

N. C. McFARLAND,
Commissioner of General Land Office.

[Endorsed:] No. 784. Hot Springs Commission. Petition of William H. and Maria Gaines. Filed Octo. 26th, '77. J. W. Anderson, cl'k H. S. com'rs.

44 UNITED STATES OF AMERICA:

Hot Springs Commission.

In the Matter of the Claim of WILLIAM H. GAINES and MARIA GAINES.

To the Hot Springs commissioners:

Your petitioners, William H. Gaines and Maria Gaines, now both in their own right, and for over twenty-five years residing at Hot Springs, in the State of Arkansas, upon the premises herein claimed, represent that they claim the following-described tract of land, a map of which is filed herewith and made a part hereof, marked Exhibit "A," situated in the Hot Springs reservation, which tract is bounded as follows, to wit: On the north by the Hot Springs Mountain reservation, with a line bearing as follows: S. 82° E. 260 feet, S. 12° 11′ E. 270 feet, N. 77° 43′ E. 680 feet, and N. 65° 03′ E. 586.3 feet, N. 88° 11′ E. 220 feet, N. 60° 19′ E. 500.1 *foot*, N. 44° 01′ E. 590 feet to ¼-sec. line between S. E. ¼ and S.W. ¼ of sec. 33, T. 2 S., R. 19 west; thence on the east by said line 1,325 feet south; thence on the south by the township line between T. 2 S. and T. 3 S.,
45 being south line of S. W. ¼ of sec. 33, T. 2 S., R. 19 W., running west 2,640 feet; thence to sec. cor. post for secs. 32 and 33, T. 2 S., and secs. 4 and 5, T. 3 S., all in R. 19 W.; thence on the west by the sec. line between secs. 32 and 33, T. 2 S., R. 19 W., 1,320 feet, running north to place of beginning, lying and being in the S. W. ¼ of sec. 33, T. 2 S., R. 19 west, except the following-described lands, a map of which is filed herewith and made part hereof, marked Exhibit "B," which lands your petitioners have sold and given to the following parties, to wit: Given to the Methodist Episcopal church the following lands: Commencing at a point 60 ft. N. of sec. cor. post for sect's 32 and 33, T. 2 S., and sect's 4 and 5, T. 3

S., all in R. 19 W., thence bearing S. 83° east one hundred and forty feet; thence N. 7° E. fifty (50) feet; thence N. 83° W. 150 feet; thence south 51 feet to place of beginning, lying and being in the S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being read from the magnetic meridian. Sold to Frank Horton the following lands: Commencing at a point N. 33° E. of sec. cor. post for secs. 32 and 33, T. 2 S., and sec's 4 and 5, T. 3 S., all in range 19 west and distant therefrom 305 ft., thence bearing south 84° E. 120 ft.; thence S. 6° E. 24 ft.; thence N. 84° E. 120 ft.; thence N. 6° E. 24 ft. to point of commencement, lying and being in the S. W. ¼ of S. W. ¼ of sec. 33, T. 2 S., R. 19 west, all the above bearings being read from the magnetic meridian.

46 Sold to Joseph Molen the following lands: Commencing at a point N. 35° 30′ W. of centr- subdivision stake on line bet. S. W. ¼ sec. 33, T. 2 S., and N. W. ¼ sec. 4, T. 3 S., R. 19 W., and distant therefrom 630 ft., thence bearing N. 29° 30′ W. 200 ft.; thence S. 60° W. 100 ft.; thence S. 29° 30′ E. 200 ft.; thence N. 60° E. 100 ft. to point of commencement, lying and being situate in the S. W. ¼ of S. W. ¼ of sec. 33, T. 2 S., R. 19 west, all the above bearings being read from the magnetic meridian. Sold to Thomas Secoy the following lands: Commencing at a point N. 87° 30′ W. of centre subdivision stake on line between S. W. ¼ of sec 33, T. 2 S., and N. W. ¼ of sec. 4, T. 3 S., all in range 19 W. and distant therefrom 640 ft., thence bearing S. 37° 20′ E. 110 ft; thence N. 81° 50′ E. 51 ft; thence N. 37° 20′ W. 120 ft; thence S. 60° W. 50 ft. to place of beginning, lying and being in the S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being read from the magnetic meridian. Sold to James Ritchie the following lands: Commencing at a point N. 35° E. of centre subdivision stake on line bet. S. W. ¼ of sec. 33, T. 2 S., and N. W. ¼ of sec. 4, T. 3 S., all in range 19 W. and distant therefrom 720 ft., thence bearing N. 60° E. 100 ft.; thence S. 29° E. 250 ft; thence S. 43° W. 105 ft.; thence N. 29° W. 285 ft. to point of commencement, lying and being in S. E. ¼ of S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being read from the magnetic meridian.

47 Sold to C. S. Williamson the following lands: On the north by the old Benton road, with a line bearing N. 60° E. 150 ft; thence on the east by the claim of Julia S. Carhart and D. Carey, with a line bearing S. 29° 30′ E. 430 ft.; thence on the south by Gaines avenue, with a line bearing S. 60° W. 150 ft.; thence on the west by the claim of Wm. H. Gaines, with a line bearing N. 29° 30′ W. 430 ft. to place of beginning, lying and being in the S. E. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being read from the magnetic meridian. Sold to I. W. Carhart the following lands: Commencing at a point N. 60° E. of centre subdivision stake on line between S. W. ¼ of sec. 33, T. 2 S., and N. W. ¼ of sec. 4, T. 3 S., R. 19 W., and distant therefrom 735 ft., thence bearing N. 29° 30′ W. 230 ft., thence N. 60° E. 190 ft., thence S. 69° 51′ E. 480 ft., thence S. 29° 30′ E. 95 ft., thence S. 61° W. 400 ft., thence N. 29° 30′ W. 200 ft., thence S. 60° W. 100 ft. to point of commencement, lying and being in the S. E. ¼ of the S. W. ¼ of sec. 33, T. 2 S.,

R. 19 W., all the above bearings being read from the magnetic meridian. Given to Sarah Flowers the following lands: Commencing at a point N. 23° 10′ east of sec. cor. post for secs. 32 and 33, T. 2 S., and secs. 4 and 5, T. 3 S., all in range 19 W., and distant therefrom 505 ft., thence bearing N. 82° 15′ E. 72 ft., thence S. 7° 45′ E. 22½ ft., thence S. 82° 15′ W. 72 ft., thence N. 7° 45′ W. 22½ ft. to point of commencement, lying and being in the
48 S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 west, all the above bearings being read from the magnetic meridian. Given to Fannie Williamson the following lands: Commencing at a point N. 83° E. of sec. cor. post for secs. 32 and 33, T. 2 S., and secs. 4 and 5, T. 3 S., all in range 19 west and distant therefrom 740 ft., thence bearing N. 40° W. 300 ft., thence S. 55° W. 40 ft., thence N. 40° W. 40 ft., thence S. 55° W. 70 ft., thence S. 23° E. 280 ft., thence N. 75° E. 200 ft. to point of commencement, lying and being in the S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being taken from the magnetic meridian. Given to Mary P. Gaines the following lands: Commencing at a point N. 21° 5′ E. of sec. cor. post for sec's 32 and 33, T. 2 S., and sec's 4 and 5, T. 3 S., all in range 19 west and distant therefrom 537 ft., thence bearing N. 79° E. 72 ft., thence S. 11° E. 41½ ft., thence S. 79° W. 72 ft., thence N. 11° W. 41½ ft to point of commencement, lying and being in the S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being read from the magnetic meridian. Sold to Wm. H. Nelson the following lands: Commencing at a point N. 28° E. of sec. cor. post for secs. 32 and 33, T. 2 S., and secs. 4 and 5, T. 3 S., all in range 19 west and distant therefrom 680 feet, thence bearing N. 58° E. 200 ft., thence N. 35° W. 135 ft., thence S. 75° W. 120 ft., thence 86° W. 170 ft., thence S. 75° E. 45 ft. to point of commencement, lying and being in the S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above
49 bearings being read from the magnetic meridian. Given to the Protestant Episcopal church the following lands: On the north by the claim of Wm. H. Gaines, with a line running N. 80° E. 65 ft.; on the east by the Gaines claim, with a line running S. 18° E. 70 ft.; on the south by the claim of S. W. Fordyce, with a line running N. 18° W. 108 ft.; thence N. 80 E. 50 ft.; thence S. 18° E. 20 ft. to the place of commencement, all the above bearings being read from the magnetic meridian.

Given to Kate McGrath the following lands: Commencing at a point N. 9° 30′ E. of sec. cor. post for secs. 32 and 33, T. 2. S., and secs. 4 and 5, T. 3 S., all in range 19 W. and distant therefrom 647 feet, thence bearing south 79° 30′ W. 102 ft., thence S. 10° 30′ E. 50 ft., thence N. 79° 30′ E. 102 ft., thence N. 10° 30′ W. 50 ft. to point of commencement, lying and being in the S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being read from the magnetic meridian. Sold to George W. Baxter the following lands: Commencing at a point S. 12° 40′ E. of ¼-sec. post fret. sec'ts 32 and 33, T. 2 S., R. 19 W., and distant therefrom 1,492 ft., thence bearing south 85° 45′ W. 65 ft., thence S. 40° 15′ E. 12½ ft., thence N. 85° 45′ E. 65 ft., thence N. 40° 15′ W. 12½ ft. to point of com-

S., all in R. 19 W., thence bearing S. 83° east one hundred and forty feet; thence N. 7° E. fifty (50) feet; thence N. 83° W. 150 feet; thence south 51 feet to place of beginning, lying and being in the S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being read from the magnetic meridian. Sold to Frank Horton the following lands: Commencing at a point N. 33° E. of sec. cor. post for secs. 32 and 33, T. 2 S., and sec's 4 and 5, T. 3 S., all in range 19 west and distant therefrom 305 ft., thence bearing south 84° E. 120 ft.; thence S. 6° E. 24 ft.; thence N. 84° E. 120 ft.; thence N. 6° E. 24 ft. to point of commencement, lying and being in the S. W. ¼ of S. W. ¼ of sec. 33, T. 2 S., R. 19 west, all the above bearings being read from the magnetic meridian.

46 Sold to Joseph Mellen the following lands: Commencing at a point N. 35° 30' W. of centre subdivision stake on line bet. S. W. ¼ sec. 33, T. 2 S., and N. W. ¼ sec. 4, T. 3 S., R. 19 W., and distant therefrom 630 ft.; thence bearing N. 29° 30' W. 200 ft.; thence S. 60° W. 100 ft.; thence S. 29° 30' E. 200 ft.; thence N. 60° E. 100 ft. to point of commencement, lying and being situate in the S. W. ¼ of S. W. ¼ of sec. 33, T. 2 S., R. 19 west, all the above bearings being read from the magnetic meridian. Sold to Thomas Snow the following lands: Commencing at a point N. 87° 30' W. of centre subdivision stake on line between S. W. ¼ of sec. 33, T. 2 S., and N. W. ¼ of sec. 4, T. 3 S., all in range 19 W. and distant therefrom 640 ft., thence bearing S. 37° 20' E. 110 ft.; thence N. 81° 50' E. 54 ft.; thence N. 37° 20' W. 120 ft.; thence S. 60° W. 50 ft. to place of beginning, lying and being in the S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being read from the magnetic meridian. Sold to James Ritchie the following lands: Commencing at a point N. 35° E. of centre subdivision stake on line bet. S. W. ¼ of sec. 33, T. 2 S., and N. W. ¼ of sec. 4, T. 3 S., all in range 19 W. and distant therefrom 720 ft., thence bearing N. 60° E. 100 ft.; thence S. 29° E. 250 ft.; thence S. 43° W. 105 ft.; thence N. 29° W. 285 ft. to point of commencement, lying and being in S. E. ¼ of S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being read from the magnetic meridian.

47 Sold to C. S. Williamson the following lands: On the north by the old Benton road, with a line bearing N. 60° E. 150 ft.; thence on the east by the claim of Julia S. Carhart and D. Carey, with a line bearing S. 29° 30' E. 450 ft., thence on the south by Gaines avenue, with a line bearing S. 60° W. 150 ft.; thence on the west by the claim of Wm. H. Gaines, with a line bearing N. 29° 30' W. 450 ft. to place of beginning, lying and being in the S. E. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being read from the magnetic meridian. Sold to I. W. Carhart the following lands: Commencing at a point N. 60° E. of centre subdivision stake on line between S. W. ¼ of sec. 33, T. 2 S., and N. W. ¼ of sec. 4, T. 3 S., R. 19 W., and distant therefrom 735 ft., thence bearing N. 29° 30' W. 250 ft., thence N. 60° E. 100 ft., thence S. 69° 51' E. 48.6 ft., thence S. 29° 30' E. 95 ft., thence S. 61° W. 100 ft., thence N. 29° 30' W. 200 ft., thence S. 60° W. 100 ft. to point of commencement, lying and being in the S. E. ¼ of the S. W. ¼ of sec. 33, T. 2 S.,

R. 19 W., all the above bearings being read from the magnetic meridian. Given to Sarah Flowers the following lands: Commencing at a point N. 23° 10′ east of sec. cor. post for secs. 32 and 33, T. 2 S., and secs. 4 and 5, T. 3 S., all in range 19 W., and distant therefrom 505 ft., thence bearing N. 82° 15′ E. 72 ft., thence S. 7° 45′ E. 22½ ft., thence S. 82° 15′ W. 72 ft., thence N. 7° 45′ W. 22½ ft. to point of commencement, lying and being in the S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 west, all the above bearings being read from the magnetic meridian. Given to Fannie Williamson the following lands: Commencing at a point N. 83° E of sec. cor. post for secs. 32 and 33, T. 2 S., and secs. 4 and 5, T. 3 S., all in range 19 west and distant therefrom 740 ft., thence bearing N. 40° W. 300 ft., thence S. 55° W. 40 ft., thence N. 40° W. 40 ft., thence S. 55° W. 70 ft., thence S. 23° E. 280 ft., thence N. 75° E. 200 ft. to point of commencement, lying and being in the S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being taken from the magnetic meridian. Given to Mary P. Gaines the following lands: Commencing at a point N. 21° 5′ E. of sec. cor. post for sec's 32 and 33, T. 2 S., and sec's 4 and 5, T. 3 S., all in range 19 west and distant therefrom 537 ft., thence bearing N. 79° E. 72 ft., thence S. 11° E. 41½ ft., thence S. 79° W. 72 ft., thence N. 11° W. 41½ ft. to point of commencement, lying and being in the S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being read from the magnetic meridian. Sold to Wm. H. Nelson the following lands: Commencing at a point N. 28° E. of sec. cor. post for secs. 32 and 33, T. 2 S., and secs. 4 and 5, T. 3 S., all in range 19 west and distant therefrom 680 feet, thence bearing N. 58° E. 200 ft., thence N. 35° W. 135 ft., thence S. 75° W. 120 ft., thence S. 6° W. 170 ft., thence S. 75° E. 45 ft to point of commencement, lying and being in the S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being read from the magnetic meridian. Given to the Protestant Episcopal church the following lands: On the north by the claim of Wm. H. Gaines, with a line running N. 80° E. 65 ft.; on the east by the Gaines claim, with a line running S. 18° E. 70 ft.; on the south by the claim of S. W. Fordyce, with a line running N. 18° W. 108 ft.; thence N. 80 E. 50 ft.; thence S. 18° E. 20 ft. to the place of commencement, all the above bearings being read from the magnetic meridian.

Given to Kate McGrath the following lands: Commencing at a point N. 9° 30′ E. of sec. cor. post for secs. 32 and 33, T. 2, S., and secs. 4 and 5, T. 3 S., all in range 19 W. and distant therefrom 647 feet, thence bearing south 79° 30′ W. 102 ft., thence S. 10° 30′ E. 50 ft., thence N. 79° 30′ E. 102 ft., thence N. 10° 30′ W. 50 ft. to point of commencement, lying and being in the S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being read from the magnetic meridian. Sold to George W. Baxter the following lands: Commencing at a point S. 12° 40′ E. of ¼-sec. post fret. sec's 32 and 33, T. 2 S., R. 19 W., and distant therefrom 1,492 ft., thence bearing south 85° 45′ W. 65 ft., thence S. 40° 15′ E. 12½ ft., thence N. 85° 45′ E. 65 ft., thence N. 40° 15′ W. 12½ ft. to point of com-

S., all in R. 19 W., thence bearing S. 83° east one hundred and forty feet; thence N. 7° E. fifty (50) feet; thence N. 83° W. 150 feet; thence south 51 feet to place of beginning, lying and being in the S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W.; all the above bearings being read from the magnetic meridian. Sold to Frank Horton the following lands: Commencing at a point N. 33° E. of sec. cor. post for secs. 32 and 33, T. 2 S., and sec's 4 and 5, T. 3 S., all in range 19 west and distant therefrom 305 ft., thence bearing south 84° E. 120 ft.; thence S. 6° E. 24 ft.; thence N. 84° E. 120 ft.; thence N. 6° E. 24 ft. to point of commencement, lying and being in the S. W. ¼ of S. W. ¼ of sec. 33, T. 2 S., R. 19 west, all the above bearings being read from the magnetic meridian.

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47 Sold to C. S. Williamson the following lands: On the north by the old Benton road, with a line bearing N. 60° E. 150 ft; thence on the east by the claim of Julia S. Carhart and D. Carey, with a line bearing S. 29° 30′ E. 430 ft.; thence on the south by Gaines avenue, with a line bearing S. 60° W. 150 ft.; thence on the west by the claim of Wm. H. Gaines, with a line bearing N. 29° 30′ W. 430 ft. to place of beginning, lying and being in the S. E. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being read from the magnetic meridian. Sold to I. W. Carhart the following lands: Commencing at a point N. 60° E. of centre subdivision stake on line between S. W. ¼ of sec. 33, T. 2 S., and N.W. ¼ of sec. 4, T. 3 S., R. 19 W., and distant therefrom 735 ft., thence bearing N. 29° 30′ W. 230 ft., thence N. 60° E. 190 ft., thence S. 69° 51′ E. 480 ft., thence S. 29° 30′ E. 95 ft., thence S. 61° W. 400 ft., thence N. 29° 30′ W. 200 ft., thence S. 60° W. 100 ft. to point of commencement, lying and being in the S. E. ¼ of the S. W. ¼ of sec. 33, T. 2 S.,

R. 19 W., all the above bearings being read from the magnetic meridian. Given to Sarah Flowers the following lands: Commencing at a point N. 23° 10′ east of sec. cor. post for secs. 32 and 33, T. 2 S., and secs. 4 and 5, T. 3 S., all in range 19 W., and distant therefrom 505 ft., thence bearing N. 82° 15′ E. 72 ft., thence S. 7° 45′ E. 22½ ft., thence S. 82° 15′ W. 72 ft., thence N. 7° 45′ W. 22½ ft. to point of commencement, lying and being in the
48 S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 west, all the above bearings being read from the magnetic meridian. Given to Fannie Williamson the following lands: Commencing at a point N. 83° E. of sec. cor. post for secs. 32 and 33, T. 2 S., and secs. 4 and 5, T. 3 S., all in range 19 west and distant therefrom 740 ft., thence bearing N. 40° W. 300 ft., thence S. 55° W. 40 ft., thence N. 40° W. 40 ft., thence S. 55° W. 70 ft., thence S. 23° E. 280 ft., thence N. 75° E. 200 ft. to point of commencement, lying and being in the S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being taken from the magnetic meridian. Given to Mary P. Gaines the following lands: Commencing at a point N. 21° 5′ E. of sec. cor. post for sect's 32 and 33, T. 2 S., and sect's 4 and 5, T. 3 S., all in range 19 west and distant therefrom 537 ft., thence bearing N. 79° E. 72 ft., thence S. 11° E. 41½ ft., thence S. 79° W. 72 ft., thence N. 11° W. 41½ ft. to point of commencement, lying and being in the S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being read from the magnetic meridian. Sold to Wm. H. Nelson the following lands: Commencing at a point N. 28° E. of sec. cor. post for secs. 32 and 33, T. 2 S., and secs. 4 and 5, T. 3 S., all in range 19 west and distant therefrom 680 feet, thence bearing N. 58° E. 200 ft., thence N. 35° W. 135 ft., thence S. 75° W. 120 ft., thence 86° W. 170 ft., thence S. 75° E. 45 ft. to point of commencement, lying and being in the S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above
49 bearings being read from the magnetic meridian. Given to the Protestant Episcopal church the following lands: On the north by the claim of Wm. H. Gaines, with a line running N. 80° E. 65 ft.; on the east by the Gaines claim, with a line running S. 18° E. 70 ft.; on the south by the claim of S. W. Fordyce, with a line running N. 18° W. 108 ft.; thence N. 80 E. 50 ft.; thence S. 18° E. 20 ft. to the place of commencement, all the above bearings being read from the magnetic meridian.

Given to Kate McGrath the following lands: Commenceing at a point N. 9° 30′ E. of sec. cor. post for secs. 32 and 33, T. 2. S., and secs. 4 and 5, T. 3 S., all in range 19 W. and distant therefrom 647 feet, thence bearing south 79° 30′ W. 102 ft., thence S. 10° 30′ E. 50 ft., thence N. 79° 30′ E. 102 ft., thence N. 10° 30′ W. 50 ft. to point of commencement, lying and being in the S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being read from the magnetic meridian. Sold to George W. Baxter the following lands: Commencing at a point S. 12° 40′ E. of ¼-sec. post fret. sec'ts 32 and 33, T. 2 S., R. 19 W., and distant therefrom 1,492 ft., thence bearing south 85° 45′ W. 65 ft., thence S. 40° 15′ E. 12½ ft., thence N. 85° 45′ E. 65 ft., thence N. 40° 15′ W. 12½ ft. to point of com-

mencement, lying and being in the S. W. ¼ of the S. W. ¼ of sec. 33,
T. 2 S., R. 19 W., all the above bearings being read from the
50 magnetic meridian. Sold to B. W. Goode the following lands:
Commencing at a point 13° 5′ E. of ¼-sec. post bet. secs. 32
and 33, T. 2 S., R. 19 W., and distant therefrom 1,420 ft., thence
bearing S. 85° W. 100 ft., thence S. 50° E. 20 ft; thence N. 85° E.
100 ft., thence N. 50° W. 20 ft. to point of commencement, lying
and being in the S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W.,
all the above bearings being read from the magnetic meridian. Sold
to G. L. Wilson the following lands: Commencing at a point S. 12°
20′ E. of ¼-sec. post between secs. 32 and 33, T. 2 S., R. 19 W.,
and distant therefrom 1,380 ft., thence bearing S. 89° 50′ W. 100 ft.,
thence S. 0° 10′ E. 35 ft., thence N. 89° 50′ E. 100 ft., thence N. 0°
10′ W. 35 feet to point of commencement, lying and being in the
S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above
bearings being read from the magnetic meridian. Given to Albert
Gaines the following lands: On the N. by the Hot Springs hotel
property, the claim of W. H. Gaines, with a line bearing north 76°
30′ E. 50 ft.; thence on the east by Hot Springs creek, with a line
bearing south 13° 30′ E. 63 ft.; thence on the south by the claim of
Gordon, with a line bearing S. 75° W. 50 ft.; thence on the west by
Valley St., with a line bearing N. 13° 30′ W. 62 ft; to point of be-
ginning, including the office of A. K. Taylor, the entrance to
Gaines' cottage, and the building occupied by Mr. Lemen,
lying and being in the S. W. ¼ of the N. W. ¼ of sec. 33,
51 T. 2 S., R. 19 W.; also the following-described land: On the
north by the claim of J. J. Sutton, with a line bearing N.
79° 30′ E. 185 ft.; thence on the east by Valley St., with a line
bearing S. 10½° 20 ft.; thence on the south by the claims of Ellen
McMurray, with a line bearing S. 79° 30′ W. 185 ft.; thence on the
west by the section line bet. sec's 32 and 33, T. 2 S., R. 19 W., and
the claim of J. J. Sumpter, with a line bearing N. 10° 30′ W. 20 ft. to
place of beginning, lying and being in the S. W. ¼ of S. W. ¼ of sec'n
33, T. 2 S., R. 19 W., all the above bearings being read from the mag-
netic meridian. Gave to Augustus L. Stitt the following lands: On
the N. by the claim embracing the Garland house, with a line bear-
ing N. 60° 45′ E. 80 ft.; thence *thence* on the east by the claim of the
Peoria house and cemet-ry, with a line bearing S. 10° E. 140 ft.;
thence on the S. by Malvern road, with a line bearing S. 60 W. 30
ft.; thence on the W. by the Malvern road, with a line bearing N.
32 W. 140 ft. to place of beginning; also the following: On the N.
by the old Benton road, with a line bearing N. 60° E. 300 ft.;
thence on the east by the claim of Jos. Molen, with a line bearing S.
26° E. 160 ft; thence on the south by the cemet-ry, with a line bearing
S. 69° W. 180 ft. and N. 81° W. 110 ft. and S. 77½° W. 32 ft.; thence
on the west by an alley fronting the Peoria house, with a line bearing
N. 14° W. 50 ft. to place of beginning, lying and being in
52 the S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all
the above bearings being taken from the magnetic meridian.
Sold to James Mingovan the following lands: Commencing at a
point S. 17° W. of centre subdivision stake on line bet. S. E. ¼ and

S. W. ¼ of sec. 33, T. 2 S., R. 19 W., and distant therefrom 500 ft., thence bearing north 24° W. 475 ft.; thence S. 770 ft., W. 300 ft.; thence S. 35° E. 420 ft.; thence S. 88° 45 E. 250 ft. to point of commencement, lying and being in the S. W. ¼ of S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being read from the magnetic meridian; all of which lands thus sold or given away they set up no claim to; that the following improvements are situate upon the premises claimed by your petitioners, namely, four hotels, fifty-three stores, saloons, and restaurants and two livery stables, one planing mill, one woolen factory and four dwelling-houses, and various stables, cribs, wells, fencing and other improvements usual about hotels, storehouses, livery stables, and dwelling-houses; that the same were erected by your petitioners and their agents and tenants under contracts made with your petitioners previous to April 24th, 1876; that they are of the value of one hundred and fifty thousand dollars.

Your petitioners further say that they claim to be the owners
53 of the said premises and entitled to again purchase the same from the United States upon the following grounds, to wit: That in 1839 Lydia Belding made application as the widow of Ludixocus Belding to the proper United States land office to purchase the whole of the southwest quarter of section (33) thirty-three, in township two (2) south and range (19) nineteen west of the fifth principal meridian, a copy of which application is hereto attached and made part hereof, marked Exhibit "C;" that said Lydia Belding some time after she had made said application transferred her right to her children, Maria Gaines, wife of Wm. H. Gaines, and Albert Belding, George Belding, and Henry Belding, a copy of which relinquishment and transfer is hereto attached and marked Exhibit "D," and after a full examination of said application to enter and purchase said quarter section of land, the Secretary of the Interior, on the 21st day of November, 1851, instructed the commissioner of public lands to permit the heirs and legal representatives of Ludovicus Belding to enter and purchase said lands; that in pursuance of said order from the then Secretary of the Interior the commissioner of public lands instructed the register and receiver of the United States land office at Washington, in the State of Arkansas, to permit the heirs and legal representatives of said Ludovicus Belding to enter and
54 purchase said quarter section of land, and, in pursuance of said instruction, Maria Belding, wife of Wm. H. Gaines, Albert Belding, Henry Belding, and George Belding, heirs and legal representatives of Ludovicus Belding, on the 19th day of December, 1851, made application in the name of said heirs and legal representatives of said Ludovicus Belding to the said register and receiver at said land office at Washington, Arkansas, which land office was the proper land office for entering said land, a copy of which application is hereto attached and marked Exhibit "E," and prayed to be taken as a part hereof, and upon said application the said register and receiver permitted said Maria Gaines, wife of Wm. H. Gaines, Albert Belding, Henry Belding, and George Belding to enter and purchase the southwest quarter of section (33) thirty-

three, in township two (2) south, range (19) nineteen west, and said heirs and legal representatives did then and there enter and purchase said quarter section from the United States, and did then and there pay the United States the sum of two hundred dollars for said quarter section, that being the maximum price charged by the United States for her public lands. Said two hundred dollars were paid and advanced by Wm. H. Gaines, the husband of said Maria Gaines, late Maria Belding, and upon the payment of said
55 sum of money said heirs and legal representatives did, on the 19th day of December, 1851, receive from B. F. Hempstead, the duly authorized receiver of the United States land office at Washington, Arkansas, a patent certificate for said land, a copy of which is hereto attached, marked Exhibit "F," prayed to be taken as part hereof. The original is in the possession of your petitioners and subject to the order an- inspection of the honorable board of commissioners.

Your petitioners respectfully show and aver that by virtue of said entry and purchase and patent certificate therefor they were by the laws of the State of Arkansas and the laws of the United States legally entitled to have the possession and control of the whole of said quarter section of land thus entered and paid for, subject only to the rights of the United States Government; that notwithstanding the legal title still remained in the United States after said entry and purchase and the issuance of said patent certificate, still they by reason of said entry and purchase and the patent certificate issued therefor acquired an equitable estate in and to said quarter section, an estate that by the laws of the State of Arkansas and of the United States *were* hereditable, devisable, and assignable, so your petitioners aver that from the 19th day of December, 1851, to and including the 24th day of April, 1876, they not only had a legal right
56 in and to the possession of the premises herein claimed, but they had a legal right recognized by the laws of the State of Arkansas and by the United States to devise, sell, or lease the whole or any portion of said premises; that your petitioners' possession, more particularly hereafter set forth, was not the possession of a trespasser or a squatter on the public lands, but was a peaceable, lawful, and rightful possession under the laws both of the State of Arkansas and of the United States, and that the sales and leases are not the sales and leases of a trespasser or squarter upon the public lands, but were the sales and leases of parties legally in possession, and your petitioners are advised and aver the fact to be that all sales and all leases made by parties rightfully and legally in possession have always been recognized, countenanced, and held to be valid by both the courts of the State of Arkansas and of the United States as between the vendor and vendee and lessor and lessee and their privies.

Your petitioners show unto your honors that when they paid for and received said patent certificate they were not in possession of any portion of said quarter section of land, and that your petitioners recovered possession *to* a large and the most valuable portion of the premises now claimed by your petitioners through the courts

of the State and the Supreme Court of the United States
57 on account of the legal right to the possession and control of the lands and premises which your petitioners now claim.

Your petitioners respectfully show that at the time of said entry the northeast quarter of said quarter section was unoccupied, and the same is now included in the Hot Springs Mountain reservation, except about three acres in the southeast corner of said northeast quarter, which three acres, more or less, had been in the lawful possession of your petitioners for more than twenty years previous to April 24, 1876; the same was previous to that time fenced and improved by your petitioners. Your petitioners make no claim to any of said northeast quarter of the said southwest quarter, except said three acres, more or less, on the south of said new reservation. The northwest quarter of said southwest quarter, when entered as aforesaid, was, with the exception of some of the hot springs that are now included in the Hot Springs Mountain reservation, in the possession of John C. Hale and Henry M. Rector and other parties. Your petitioners recovered judgment against John C. Hale for the possession of so much of said northwest quarter of said southwest quarter as was occupied by him, and said judgment was affirmed by both the supreme court of the State of Arkansas and
58 of the United States, and also recovered judgment for possession against Henry M. Rector and others for the portion of said northwest quarter of said southwest quarter occupied by them; which judgments were affirmed by the supreme court of the State of Arkansas and of the United States, and, after said judgments were recovered and affirmed as aforesaid, said Hale and said Rector filed a bill in equity setting up an equitable title to said land and enjoining the execution of the judgment at law; which last suit was still pending in the United States Supreme Court on the 24th day of April, 1876, so that your petitioners never in fact had actual possession of said northwest quarter of said southwest quarter, and they do not now set up any claim to the same. The southeast quarter of said southwest quarter at the time of said entry was unoccupied, with the exception of about ten acres thereof in the southwest corner of said southeast quarter, which was cleared and fenced and in cultivation and occupied by Abigal Sabin, who soon afterwards married a Mr. Du Pas. Your petitioners, being willing to pay said Abigal Sabin as well as all others for the improvements that they had made, bought out said Abigal Sabin's claim, and she delivered the possession to your petitioners, and your
59 petitioners have remained in possession and control of said field ever since, and were in possession of the same on the 24th day of April, 1876. Your petitioners, after purchasing and paying for said improvements, afterwards took actual possession of the remainder of said southeast quarter of the southwest quarter and cleared off and fenced and improved the same, and was in continued possession of the same for more than twenty years previous to the 24th day of April, 1876, with exception of a small portion sold off to other parties which is hereinbefore set forth, and with the further exception of a few lawless trespassers whose tres-

passes will be hereafter set forth. Nearly all of the southwest quarter of the southwest quarter at the time of said entry was in the possession of Abigal Sabin, Lawson Runyon, Abraham Kempner, Mrs. Belding, Mrs. Julian, Patrick Burke, James Sumpter, Richard Puckett, Edward Mills, Jacob Sweiptzer, Samuel and Oney Macklin, Harrison D. Flowers, and E. G. Malone.

Abigal Sabin had at that time about ten or fifteen acres in the southeast corner of said southwest quarter cleared, fenced, and in cultivation, which, together with land adjoining that in the southwest corner of the southeast quarter of said southwest quarter, made a field from twenty to twenty-five acres, and said
60 Abigal had in addition thereto a small field between said field and Hot Springs mountain of about two acres, and had a lot of houses and stables about where the present residence of your petitioners is, all of which your petitioner, Wm. H. Gaines, bought of said Abigal Sabin and for which he paid the sum of seven hundred dollars, as will more fully appear by reference to a copy of Abigal Sabin's or Du Pas' agreement and receipt therefor, which is hereto attached and marked Exhibit "G," prayed to be taken as a part hereof; the original bill will be produced in evidence to the court. Your petitioner, Wm. H. Gaines, also paid E. G. Malone for his improvements, a house upon the west side of Main or Valley street, where the St. Louis saloon now stands. Lawson Runyon, Mrs. Belding, and Mrs. Julian surrendered their claims without any suit. Abigal Sabin had other claims that she refused to sell or surrender. Your petitioners, always desiring to deal fairly with all men, offered to pay all of said occupants for their improvements, but they refused to sell to your petitioners or to surrender to them, and on the 5th day of January, 1852, your petitioners brought suits in ejectment against Richard Puckett, Harrison D. Flowers, Samuel and Oney Macklin, Abigal Sabin, Patrick Burke, and James Sumpter, and in 1853 and 1854 the further suits in ejectment
61 against Jacob Sweiptzer, Abraham Kempner, Edward Mills, and Jacob W. Parker; said suits included all the property on both sides of Valley street from the now Guinn house property to the Earl house property and a mill on the east side of Hot Springs creek, just south of the Malvern crossing. This property was at that early day all enclosed, occupied, and improved; it had upon it mills, dwelling-houses, stores, hotels, livery stables, blacksmith and wagon shops, and various other buildings. Your petitioners, being legally entitled to the possession of said property by virtue of said patent certificate, recovered judgment for possession of all of said property in the years 1856 and 1858. On the 3rd of March, 1856, the clerk of Hot Springs county issued writs of possession upon said judgments, and on the 6th day of March, 1856, the sheriff put your petitioner, Wm. H. Gaines, into the possession of the mill-house and other improvements and lands occupied by J. W. Parker, on and east of Hot Springs creek, a copy of which writ is hereto attached, marked "H," and prayed to be taken as part hereof, and just north of the now Malvern crossing, and on the same day said sheriff put your petitioner, Wm. H. Gaines, into the possession of a dwelling-

house and outhouses occupied by Richard Puckett, which house and grounds were where the Hot Springs hotel now stands, a
62 copy of which writ is hereto attached and marked "I" and prayed to be made a part hereof; and on the same day said sheriff put your petitioner in possession of all the houses, buildings, improvements, and inclosures occupied by Harrison D. Flowers, which property included what is now occupied by G. L. Wilson and Central house, a copy of which writ is hereto attached, marked "J," and prayed to be taken as a part hereof; and on the same day said sheriff put your petitioner, Wm. H. Gaines, into the possession of the dwelling-house and outhouses and inclosures occupied by Samuel and Oney Macklin, on the east side of Valley street, which property included the property now leased by Louis Bertsch and Wm. Staats, a copy of which writ is hereto attached, marked "K," and prayed to be taken as a part hereof; and on the same day said sheriff put your petitioner into the possession of all the property occupied by Abigal Sabin's blacksmith shop and wood shop and other buildings, on the east side of Valley creek, which property included the property since leased to D. P. Beldin, J. W. Kimball, R. H. Colvin, and J. L. B. Caver by Wm. H. Gaines, and held and occupied by parties under said leases until and including April 24th, 1876, a copy of which writ is hereto attached, marked Exhibit "L," and prayed to be taken as a part hereof; and on the same day said sheriff put your petitioner, Wm. H. Gaines, in possession
63 of all the enclosures, storehouses, and dwellings occupied by Patrick Burke on both sides of Valley street, which property includes the property since leased to Bell and McCarthy, Herman Moscowitz, Philip A. Helfrick, J. W. Brantley, John Kubler, Green Payne, and H. C. Anderson by Wm. H. Gaines, and held and occupied by and under said lease until and including April 24th, 1876, a copy of which writ is hereto attached, marked Exhibit "M," and prayed to be taken as a part hereof; and on the same day said sheriff put your petitioner, Wm. H. Gaines, into possession of the inclosures, hotels, stores, and dwellings occupied by James Sumpter, on the west side of Valley street, which property includes the property leased to J. T. Chidester and Dr. O. A. Hobson and the open ground below Dr. O. A. Hobson's building and the ground occupied by Little and Jenkins on the west side of Valley street, and at the same time your petitioner had a judgment against said James Sumpter for one thousand dollars damages, and in consideration of your petitioner instructing the sheriff to return the execution satisfied the said Sumpter surrendered his lots and improvements he had possession of on the east side of Valley street to your petitioner and took a lease for the same, a copy of which writ is hereto attached, marked
64 "N." Said Chidester and Hobson held and occupied under said leases until and including April 24th, 1876, and on the — day of —— the sheriff of Hot Springs county put your petitioner, Wm. H. Gaines, into the possession of the lands, houses, and buildings occupied by Jacob Sweiptzer on the east side of Valley street, which property has since been leased by Fife and Houston and assigned to R. E. Allen and by Yonley & Bro., and was occupied on

said leases from the said — day of —— until and including the 24th day of April, 1876, a copy of which writ is hereto attached, marked "O," and prayed to be taken as a part hereof; so your petitioner- avers that on the — day of —— they not only had the legal but actual possession of the southwest quarter of the southwest quarter of said section thirty-three; that the same was fenced and improved at that date; that it had on it improvements worth the sum of five thousand dollars; that your petitioners kept possession and control of the same from that date until and including the 24th day of April, 1876; that they kept the improvements in repair, and in 1859 and 1860 caused to be built a theatre upon lands near Valley street just south of where the bridge now crosses the Hot Springs creek; also built other houses below the theatre, where the Celia house now stands. Your petitioners aver that they have resided
65 on the premises claimed ever since 1852, a period of over twenty-five years. Your petitioners file herewith a map showing the improvements on the premises claimed in 1860, marked Exhibit "S." Your petitioners also aver that, being in the lawful, legal, and actual possession of said premises claimed in the year 1856, your petitioner, Wm. H. Gaines, on the 6th day of March, 1856, leased all the houses and outhouses, bath-houses, stables, gardens, lots, etc., to James Sumpter that had been occupied by James Sumpter before Wm. H. Gaines recovered the judgment and was put into possession by writ of possession heretofore referred to and compromise heretofore referred to, except one storehouse and two rooms then occupied by A. Kempner; said lands, houses, outhouses, and bath-house, stable, and garden are more particularly described in the lease, a copy of which is hereto attached, marked Exhibit "R," the original having been lost or mislaid, and which are also shown by map, showing old improvements, both of which are asked to be taken as a part hereof; and your petition-rs also, on the same day and year, rented one store-room and two rooms to A. Kempner, a copy of which lease is hereto attached, marked Exhibit "P," and prayed to be taken as a part hereof; said store and two rooms leased to Kempner occupied the ground now leased to J. T. Chi-
66 dester; and on the 8th day of December, 1857, your petitioners made the further lease of a part of the premises and improvements herein claimed to J. W. Parker, a copy of which lease is hereby attached and prayed to be taken as a part hereof, marked Exhibit "Q," which lease included stables and buildings in the then forks of the road where the buildings commonly known as the Nichols, Vaughn, and Ducker building now stand; also a mill on the east side of the creek and north of the now Malvern crossing. All of said tenants occupied said premises under said lease until after the late civil war commenced, and said Sumpter renewed his lease until Hale was dispossessed by Gaines *et al.* Your petitioners aver that soon after J. W. Parker gave up possession of the premises between the then forks of the road they leased the same to John Sammons, who used a portion thereof for a blacksmith shop during the war, and it was reported to Maj. Gen'l Steele that John Sammons was in the habit of shoeing horses belonging to

guerillas, bushwhackers, &c., and a company of Federal soldiers were sent from Little Rock to Hot Springs to burn said shops and houses, and said shops and houses were burned in accordance with said instruction; and your petitioners are informed that afterwards various parties reported to Maj. Gen'l Steele, the Federal general commanding at Little Rock, that Mrs. Sumpter, the
67 widow of James Sumpter, was harboring, protecting, and feeding guerillas and bushwhackers in the houses that her husband, James Sumpter, had rented from your petitioner, Wm. H. Gaines, and Maj. Gen'l Steele sent another company from Little Rock to Hot Springs to burn said buildings, and said company did, in accordance with their orders, burn said buildings, together with the buildings that had been rented to A. Kempner, and which he had previously vacated; and they also burned at the same time the storehouse purchased of Malone. All of these buildings burned were the property of your petitioners. Your petitioners also aver that during the war the theatre building was destroyed and torn down by marauders.

Your petitioners aver that during the late civil war there were very few persons that visited the springs for their health, and the buildings owned by your petitioners for the use and accommodation of visitors became old and dilapidated, and when the war closed your petitioners began to repair their buildings for the purpose of renting the same to the public, and in 1870, in order to accommodate the public and for the purpose of improving and making valuable their property that they had thus acquired, and that the Supreme Court of the United States had decided that they were
68 entitled to have possession of and which your petitioners honestly believed they were entitled to and would soon receive a patent for, they built, at an expense of twenty-four thousand dollars, the Hot Springs hotel, the first large, commodious, first-class hotel ever built in Hot Springs. They also built and purchased before the 24th day of April, 1876, several other buildings, used as offices, storehouses, restaurants, saloons, and dwelling-houses. Your petitioners also refenced the premises herein claimed and cleared off a large portion of the ground claimed and put it into cultivation. Your petitioners also made large improvements to the houses in which they live. Your petitioners aver that the improvements that they have made independent of the improvements made by tenants of your petitioners, and which improvements made by tenants are by law also the improvements of your petitioners, as will be fully set forth hereinafter, cost at least the sum of sixty thousand dollars; and your petitioners show and aver that they have spent in defending the right conferred upon them to the premises claimed by the United States in issuing said patent certificate the sum of at least thirty thousand dollars in costs and lawyers' fees, and that they have paid about six
69 thousand dollars taxes to the State and county upon said premises; that your petitioners having purchased said premises from the United States Government, and honestly believing that they had a title to the same, and knowing that if said prem-

ises were sold for taxes their adversaries would buy it in and try to evict them upon such tax title, they always paid the taxes assessed against them on said premises promptly, and your petitioners aver that they had such confidence that they would get a patent to the whole of said quarter section of land, and had such a desire to have no cloud upon their title that they paid $416 00 taxes only — days before the Supreme Court of the United States declared that no one was entitled to a patent for said quarter-section. Your petitioners aver that they have paid out for improvements, taxes, costs, lawyers' fees, and travelling expenses in attending court more than one hundred thousand dollars. Your petitioners have leased at various times a large portion of the property herein claimed, all which your petitioners herein set forth. Your petitioners aver that they
70 are the claimants and rightful occupants of said lands claimed; that they have caused all the improvements to be made that have been made thereon; that no one else have made any improvements thereon in their own right, but all buildings erected and improvements made by other parties than your petitioners upon said claim, other than those recovered in law by your petitioners, were made as the agents and tenants of your petitioners, under an express contract, and said buildings and improvements thus erected are now, in fact, in law, the buildings and improvements of your petitioners, and were the buildings and improvements of your petitioners on the 26th day of April, 1876, and were not the buildings of any one else, and all parties pretending to claim the same are estopped, both in law and equity, from setting up that they made the same in their own right, and are estopped, both in law and equity, from setting up that they occupied the respective premises claimed in any other manner than as agents and tenants of your petitioners; and your petitioners again aver that they are not only both the rightful claimants and rightful occupants, but that they are the only parties since 1852 that ever occupied the same in their own right; and they aver that George Belding, Albert Belding, and Henry Belding
71 having leased, assigned, transferred, and set over to your petitioners all their rights in and to said premises. Your petitioners again aver that they had, under a patent certificate from the United States, legally, peaceably, and uninterruptedly occupied said premises for more than twenty years previous to and including April 24th, 1876, and that they were the only parties that were upon the 24th day of April, 1876, occupying said premises in their own right. So your petitioners aver that, having once entered and paid the United States for the land claimed, which money the United States still retains, and having owned and made the first improvements on said premises, and having occupied in their own right and improved and caused to be improved in their own right said premises continuously and peaceably for more than twenty years previous to and including April 24th, 1876, and having paid taxes upon said lands for more than twenty years, and the Supreme Court of the United States having repeatedly decided that your petitioners were legally and rightfully entitled to the possession of

said lands and improvements, one of which decisions of the Supreme Court of the United States, declaring that your petitioners
72 are entitled to the premises in their possession and to the improvements made and caused to be made as against everybody except the United States, has been rendered since the decision of April 24th, 1876, and which decision the Supreme Court of the United States say is in harmony with the decision of April 24th, 1876, that they are by the laws of the land in equity and good conscience alone entitled to again purchase said premises from the United States. Wherefore they pray that the commissioners shall adjudge to them the right to purchase the said premises from the United States and for other proper relief.

WM. H. GAINES.
MARIA GAINES.

GENERAL LAND OFFICE, *November 25th*, 1851.

GENTLEMEN: The papers accompanying your letters of the 18th and 24th March last in reference to the claims of the Hot Springs, in Arkansas, having been submitted to the Secretary of the Interior for his action on the legal point in the case, to wit, the reservation of the land by Congress, they were returned to this office for its decision on the respective merits of the pre-emption claims, irrespective of this question.

73 On the 26th day of August last this office returned the papers with its decision adverse to the claims of the heirs of John Percifull and in favor of that of the heirs of Ludovicus Belding, it agreeing with you both as to the establishment of the facts of cultivation in 1829 and possession on May 29th, 1830, and regarding the objections of the receiver, founded upon the opinion that those acts were performed as the tenant of another as not affecting the validity of the claim. On the 14th ult. this office received the opinion and decision of the Secretary of the Interior, dated the 10th of that month, in which he sustains the existing validity of the act of the 20th April, 1832, it not having been repealed or affected by any subsequent law, and that therefore none of the claims preferred for this land are of any legality. On the said 14th ult. an application was made by the attorney of the heirs of Belding for permission to make an entry of said claim in order that they may be placed in a proper position for the assertion of their rights hereafter in the courts, stating that of course under the decision of the Secretary they should not ask for a patent.

This was refused by this office, and an appeal from that
74 action taken to the Secretary of the Interior, who on the 21st inst. addressed this office a letter, a copy of which is herewith enclosed. In accordance with the directions of the Secretary therein contained you are instructed to permit the "heirs of Ludovicus Belding" to make payment for the S. W. qr. sec. 33, T. 2 S., R. 19 W., as containing 160 acres, and, in addition to the ordinary entry thereof upon your books and the return to this office, you will note the fact of its interference with the New Madrid location of Langlois, of its embracing land directed to be reserved by act of 20th of

April, 1832, and that said entry is permitted under the Secretary's decision of the 21st November, 1851. Similar annotations will be made on the receiver's receipt and the register's certificate.

Respectfully, your obedient servant,

J. BUTTERFIELD,
Commissioner.

Register and receiver, Washington, Arkansas.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *November 21st*, 1851.

SIR: Upon consultation with the Attorney General, and after full consideration of the application of A. H. Lawrence, Esq., attorney for the heirs of Ludovicus Belding, one of the claimants to
75 the Hot Springs of Arkansas, on appeal from your decision of the 15th ultimo, against permitting said heirs to make entry under the acts of 29th May, 1830, and 14th July, 1832, I have concluded that it will be proper and in accordance with precedent to permit them to do so, and you will therefore instruct the register and receiver accordingly. Said entry will remain subject to the same power of revision and control by the General Land Office and this department as may be lawfully exercised over any ordinary entry. The Government will still hold the ultimate power of protecting its own rights, while the claimants will merely be placed in a position to contest the adverse claims of others to the same land.

I am, sir, respectfully your obedient servant,

ALEXANDER H. H. STUART, *Secretary.*

The Commissioner of the General Land Office.

No. 6545.

LAND OFFICE, WASHINGTON, ARKANSAS,
December 19th, 1851.

We, Maria Gaines, wife of William H. Gaines, late Maria Belding; Albert Belding, Henry Belding, and George Belding, heirs and legal representatives of Ludovicus Belding, deceased, of Hot Springs county, Arkansas, do hereby apply to purchase the southwest
76 quarter of section thirty-three (33), in township two (2) south, of range nineteen (19) west, as containing one hundred and sixty acres, for which we have agreed with the register, acting under instructions from the Commissioner of the General Land Office bearing date 25th November, 1851, to give at the rate of one dollar and twenty-five cents per acre.

A. BELDING.
MARIA GAINES.
HENRY BELDING.
GEORGE BELDING.

I, William H. Etter, register of the land office at Washington, Arkansas, do hereby certify that the tract above mentioned is sold

as containing one hundred and sixty acres, as mentioned above, and that the price agreed upon is one dollar and twenty-five cents per acre.

WM. H. ETTER, *Register.*

NOTE.—In accordance with instructions, I note the interference of this entry with the New Madrid location of Langlois, of it embracing land directed to be reserved by act of April 20th, 1832, and that the entry is permitted to be made under the decision of the Secretary of the Interior of November 21, 1851, transmitted to this office by Commissioner of General Land Office under date of 25th November, 1851.

W. H. ETTER, *Register.*

REGISTER'S OFFICE, WASHINGTON, ARKANSAS,
January 19th, 1852.

77 I, William H. Etter, register of the land office at Washington, Arkansas, do hereby certify that the foregoing pages contain a true copy of the letters received from the Commissioner of the General Land Office, the application filed, and the annotation on the tract book in this office made under said instructions.

WM. H. ETTER, *Register.*

No. 6545.

RECEIVER'S OFFICE AT WASHINGTON, ARKANSAS,
December 19th, 1851.

Received from Maria Gaines, wife of William H. Gaines, formerly Maria Belding; Albert Belding, Henry Belding, and George Belding, the heirs and legal representatives of Ludovicous Belding, deceased, of Hot Springs county, in the State of Arkansas, the sum of two hundred dollars in full for the southwest quarter of section thirty-three (33), in township two (2) south, of range nineteen west, containing one hundred and sixty acres (160), according to the return of the surveyor general, at $1.25 per acre. According to instructions I note that this entry interferes with the New Madrid location of Francis Langlois on the same lands, and also it embraces lands directed to be reserved by the act of Congress of the 20th April, 1832, and is only permitted to be made under the de-

78 cision of the Secretary of the Interior, under date of November 21st, 1851, and the instructions of the Commissioner of the General Land Office, under date of November 25th, 1851, in accordance with said decision.

$200. B. F. HEMPSTEAD, *Receiver.*

Receiver's Receipt, December 19th, 1851, *for* $200, *Entrance Money for Hot Springs Quarter Section* (*S. W.* — 33, *T.* 2 *S.*, *R.* 19 *W.*), "*G.*"

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, *December 23rd*, 1873.

I, W. W. Curtis, acting Commissioner of the General Land Office

do hereby certify that the annexed copy of the tract book showing the Washington, Arkansas, cash entry No. 6545, of Maria Gaines *et al.*, is a true and literal exemplification from the records of this office showing that said entry has not been cancelled.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above mentioned.

W. W. CURTIS,
Acting Commissioner of General Land Office.

(Part of section), S. W. ¼; (section), 33; (township), 2 S.; (range), 19 W.; (acres), 160; (rate per acre, dollars, cents), $1.25; (purchase-money), $200.00; (name of purchasers), Maria Gaines, late Maria Belding; Albert Belding, Henry Belding, and George
79 Belding, heirs of L. Belding; (date of sale), 1851—December 19; (number of receipt and certificate of purchase), 6545.

Abstracts of Land Sold in the Land Office to —— from the — Day of —— to the — Day of the Same Month, Inclusive.

(When sold), 19th December, 1851; (number of receipt and certificate), 6545; (by whom purchased, name), A. Belding, Maria Gaines, H. Belding, and George Belding, Hot Springs, per act of 20th April, 1832; (tract purchased) (section of part of section), (S. W. quarter, whole of); (number of section), 33; (number of township), 2 S.; (number of range), 19 W.; (quantity acres), 160; (price per acre) (dollars, cents), $1.25; (purchase-money) (dollars), $200; (section 33), township 2S, range 19 W.; reserved by the order of the President May 16th, 1839, for —— ——.

UNITED STATES LAND OFFICE,
CAMDEN, ARKANSAS.

I hereby certify that the above and foregoing is a true and full copy of the tract book in relation to section thirty-three, township two south, of range nineteen west, as the same remains in this office.

Given under my hand this second day of January, 1874; and I am unable to find in this office any instruction to this office from the Secretary of the Interior or from the Commissioner of
80 the General Land Office, at Washington, D. C., to cancel the above entry of Belding and Gaines; therefore said entry is not cancelled, upon the records in this office, the 13th day of January, 1874.

N. N. RAWLINGS, *Register.*

STATE OF ARKANSAS, } *To wit:*
County of Hot Springs, }

The State of Arkansas to the sheriff of Hot Springs county, Greeting:

Whereas on the second day of March, A. D. one thousand eight hundred and fifty-four, at our circuit court of Hot Springs county, by the consideration and judgment of said court, Wm. H. Gaines

and Maria Gaines, his wife; Albert Belding, Henry Belding, and George Belding recovered against Patrick Burke the sum of one hundred dollars, as well as the possession of certain lands and tenements situated in said county, namely, all that part of a certain tract or parcel of land known and described on the plat of the public survey as the southwest quarter of section thirty-three, in township two south of range nineteen west, described as follows, to wit: All that portion of said quarter section enclosed by the fence or enclosure now surrounding on three sides a certain tenement known as Burk's storehouse, including the land on which said storehouse is situated, the said store-
81 house being — what is known as Hot Springs valley, fronting on the west side of the stage road leading from the Hot Springs to Little Rock, and also a certain tenement now occupied by one Jacob W. Parker, including all the land enclosed by the fence now surrounding the same, and all the enclosures adjoining and connected with the same, the said last-mentioned tenement and enclosures being below and south of the point where the stage road crosses the Hot Springs creek west of said stage road and between that road and the road leading south from Hot Springs to the Washita, which was adjudged to them for their damages sustained in that behalf expended, and which costs are taxed and amount to the sum of twenty-two dollars and eighteen cents: You are therefore commanded that you forthwith deliver to the said Wm. H. Gaines and Maria Gaines, Albert Belding, Henry Belding, and George Belding possession of the premises above described; and you are further commanded that of the goods and chattels, lands and tenements, of the said Patrick Burke you cause to be made and levied the damages, together with costs aforesaid, and that you have the said damages and costs before our said circuit court, at the next February term thereof, on the second day of said term, and
82 you then and there certify how you have executed this writ.

In testimony whereof I, R. Stribblong, clerk of the said court, have hereunto set my hand and (L. S.) affixed the seal of the said court this 23rd day of November, 1857.

R. STRIBLONG, *Clerk.*

I do certify that I have executed the within by putting the within-named Wm. H. Gaines in possession of the within-described property on the 26th day of November, 1857, as I am within commanded and the within named; and I further certify as to within-named damages of one hundred dollars, &c., I did not levy the same of the goods and chattels, lands and tenements, of said defendant Burk as I am within commanded because as to said damages I was enjoined and restrained by writ of injunction issued in that behalf by the clerk of Hot Springs county upon a bill filed by said Burk and others for that purpose this Feb'y 15th, 1858.

JOSEPH JESTER, *Sheriff.*

In the Matter of the Claim of Wm. H. Gaines and Maria Gaines, No. 784, Consolidated with Sundry Other Cases.

Monday, *February 11th*, 1878.

Forenoon Session.

Come now the claimants, William H. Gaines and Maria
83 Gaines, by their attorney, Hamilton Benjamin, and offer in evidence in support of their claim the following, to wit:

1. Certified copy of a transfer by Nancy Moore on the 3rd day of March, 1829, to Alexander L. Rogers, and assigned by said Rogers on the 5th day of December, 1829, to Wm. H. Moore, and on the 4th day of March, 1830, assigned by said Moore to L. Belding.

2. Certified copy from the records of the General Land Office of an application to the Secretary of the Interior by the attorney of the Belding heirs to purchase a certain quarter section of land in the Hot Springs Mountain reservation, together with the endorsement of the Attorney General in favor of the right of said Belding heirs to enter said land.

3. Instruction of the Secretary of the Interior, dated November 21, 1851, to the Commissioner of the General Land Office in regard to allowing said Belding heirs to enter said land.

4. The instruction of the commissioner of public lands, under date of August 20, 185–, in the form of a letter.

5. Copy certified by the register of the land office of the instructions issued by the Commissioner of the Land Office.

6. The application of the heirs of Ludovicus Belding to purchase and enter the southwest quarter of section 33, township 2 south, 19 west.

84 7. Receipt of the receiver of the land office, B. F. Hempstead, No. 6545, dated December 19th, 1851, for $200, for patent certificate for the southwest quarter of said section 33, township 2 south, 19 west.

8. Bill of sale of improvements of Abigail Dupás, late Abigail Sabin, dated March 25, 1852, to William H. Gaines.

9. Certified transcript of a judgment rendered in the Hot Springs circuit court at the February term, 1858, in favor of William H. Gaines *et al.* and against Jacob Sweiptzer.

10. Certified transcript of a judgment rendered in the Hot Springs circuit court on the 25th day of February, 1856, in favor of William H. Gaines and others and against Jacob Sweiptzer.

11. Certified transcript of a judgment of dismissal of appeal in the supreme court of Arkansas, dated February 18th, 1860, in case Wm. H. Gaines *et al. vs.* Jacob Sweiptzer, said judgment being the same rendered in the circuit court of Hot Springs county at February term of 1858.

12. Certified transcript of the record entry of the supreme court of Arkansas on appeal in said cause, dated July 6th, 1857, being in the case wherein judgment was rendered on the 25th day of February, 1856, in the Hot Springs circuit court.

85 13. Certified transcript of record entry in the Supreme Court of the United States in same case, December term, 1859.

14. Certified transcript of record in the supreme court of Arkansas in same case, dated in 1860.

15. Certified copy of record entry of the supreme court of Arkansas made on the 18th day of February, 1860, in the cause wherein judgment was rendered on the 25th day of February, 1856.

16. Certified copy of a judgment rendered on the 15th day of February, 1858, in the Hot Springs circuit court, in favor of Wm. H. Gaines *et al.* against Abraham Kempner, being the same incorporated with the petition of William H. and Maria Gaines, No. 784.

17. Certified transcript of the record entry of the supreme court in same case, appealed, made on the 18th day of February, 1860.

18. Certified transcript of record entry in suit in ejectment of William H. Gaines *vs.* Edmund Mills and Roxana Butler in Hot Springs circuit court, made February 25th, 1856.

19. Certified transcript of record entry of the supreme court of Arkansas in the case of Edmund Mills *et al. vs.* William P. Gaines, dated July 6th, 1857.

20. Certified transcript of record entry of the Supreme Court of the United States, on appeal of same case to that court, made
86 on the 9th day of January, 1860.

21. Certified transcript of record entry in the supreme court of Arkansas in same case, dated February 18th, 1860.

22. Certified transcript of record entry of the Hot Springs circuit court, in 1856, showing judgment against John C. Hale in favor of William H. Gaines and others, together with certified transcript of three record entries in same cause in the supreme court of Arkansas; also certified transcript of record entry in same case in the Supreme Court of the United States. (Messrs. John M. Harrell and W. P. Walsh enter their several objections to the admission of the foregoing transcripts in behalf of sundry claimants represented by them.)

23. Certified transcript of record entries in the supreme court of Arkansas in the case of Henry M. Rector *et al. vs.* Wm. H. Gaines *et al.*, together with a certified transcript of record entries made in the Supreme Court of the United States in the same cause.

24. Certified copy of record entry in the Supreme Court of the United States, December 2nd, 1859, in the case of William H. Gaines *et al. vs.* Loretta T. Hunter.

25. Certified transcript of judgment rendered in the Hot Springs circuit court on the 25th day of February, 1856, in favor of
87 William H. Gaines *et al. vs.* James Sumpter.

26. Writ of possession in case of Patrick Burke *vs.* Wm. H. Gaines *et al.* in the supreme court of Arkansas.

27. Certified transcript of record entries in the supreme court of Arkansas in the case of Loretta T. Hunter *vs.* Wm. H. Gaines *et al.*, July term, 1855.

28. Writs of possession, with the sheriff's return thereon endorsed, in case of Wm. H. Gaines *et al. vs.* J. W. Parker, Hot Springs circuit court, March 3rd, 1856, returned same day.

29. Writs of possession and sheriff's return thereon in case of Wm. H. Gaines *et al. vs.* J. W. Parker, in the Hot Springs circuit court, issued March 3rd, 1856, and returned March 11th, 1856; also writ of possession and sheriff's return thereon in the following cases, in all whereof Wm. H. Gaines *et al.* were plaintiffs, to wit: Richard Puckett, issued March 3rd, 1856, returned March 10th, 1856; Harrison D. Flowers, issued March 3rd, 1856, and returned June 16th, 1856; Samuel Macklin *et al.*, issued March 3rd, 1856, returned March 10th, 1856; Abigail Sabin, issued March 3rd, 1856, returned May 1st, 1856; Patrick Burke, issued November 23rd, 1857, returned Feb'y 15th, 1858; James Sumpter, issued March 3rd, 1856, returnable March 10th, 1856; all of which are certified by the clerk of Hot Springs county in 1858. (John M. Harrell and W. P. Walsh severally in behalf of sundry parties represented by them object to the admission of the above-described writs.)

88 WILLIAM H. GAINES, being first duly sworn, testified as follows:

Questions by his attorney, H. BENJAMIN:

1st Q. State your name, age, and residence.

A. Wm. H. Gaines; age, 80; residence, Hot Springs.

2nd Q. State to the commission in your own way the general history of this case.

—. My name is Wm. H. Gaines, 80 years of age, and have kept house here for the last 25 years. I am one of the claimants in claim No. 784. I married one of the heirs of Ludovicus Belding in the year 1849. I do not recollect what year it was, but think it was about the year 1851, I went to Washington to investigate all the claims on the Hot Springs property. I found Mrs. Belding had proved up a pre-emption in the year 1839, and came to the conclusion that she had the best title of the three claims I found in the Land Office. I employed A. H. Lawrence to investigate those claims, and came to the conclusion to prosecute the claim of the Belding heirs, and made application to the Secretary of the Interior to have that claim referred back to the district land office to be reproved up, clothing the other claimants with authority to examine, disprove, or invalidate the testimony if they saw fit. I do not recollect exactly what time we were in Washington, but think it was in the summer or fall of 1850. It was referred back to the district land officers to be reproved and investigated, and on the 22nd of January, 1851, Lydia Belding, widow of Ludovicus Belding, relinquished her right in favor of her children, the heirs of Ludovicus
89 Belding. The proof was taken up and well cross-examined by Rector and Hale. When the proof went to Washington her attorney made application to enter the land, which the Commissioner of the Land Office refused, and he appealed to the Secretary of the Interior. The Secretary of the Interior first decided against the entry, and we appealed to the Attorney General. The Secretary of the Interior in his letter to the Commissioner, after a full consideration and consultation with the Attorney General, came

to the conclusion that it was right and proper to admit the entry of the Belding heirs, and directed him to so instruct the district land officers in Arkansas. He did so instruct them, and the entry was made in the name of the four heirs, and I advanced the purchase-money, the sum of two hundred dollars, which was paid to the Government and which the Government still holds. It has never been repaid to the heirs. When I entered this I received a patent certificate in the name of the heirs for the southwest quarter of section 33, township 2 south, range 19 west, in the State of Arkansas. After getting the certificate of entry I came directly to the Hot Springs and purchased of Abigail Sabin all her improvements east of Hot Springs creek, which included all the improvements east of said creek except a small house occupied by Richard Puckette, where the Hot Springs house now stands, and a small cabin above the Puckette house and a cabin and mill near the now Malvern
90 crossing and an enclosure below the Malvern crossing and between the Malvern road and Hot Springs creek of Patrick Burke. Said Abigail Sabin's improvements consisted of a lot of cabins, cribs, stables, gardens, and lots where and near where I have since resided at the springs, and also included two springs on the mountain and a large field east of the New Malvern road and south of the now Gaines avenue, making in all 20 acres, more or less. These improvements purchased, with the exceptions named, were all the improvements that were on the south half of the southwest quarter of section 33, township 2 south, range 19 west, east of the Hot Springs creek. These fields were all enclosed with fences when I bought them, and had been in cultivation apparently for several years, and have been occupied by me and kept fenced ever since—from the time of said purchase up to and including the 24th of April, 1876—and a large portion of the time I have had them in cultivation. At that time there was no one living on this quarter section, east of the improvements I bought of Mrs. Sabin, and continued to be none until after the close of the war. I took charge of the land and prevented people from cutting timber as long as I could keep them off, and paid taxes on it from the time it was entered to the date of the decree. The improvements that were excepted were right along on the creek bank. The west side of
91 Hot Springs creek, at the time of making this entry, was in the possession of Lawson Runyon, Abraham Kempner, Mrs. Belding, Mrs. Julian, Patrick Burke, James Sumpter, E. G. Malone, Edmund Mills, Harrison D. Flowers, Abigail Sabin, Sam. and Oney Macklin, and Jacob Switzer, and on the 5th of January, 1852, in the name of myself and Belding heirs I commenced suits of ejectment in the Hot Springs circuit court against Richard Puckette, Harrison D. Flowers, Patrick Burke, Abigail Sabin, James Sumpter, and soon thereafter I commenced suits against Jacob W. Parker, who was in possession of the mill and cabin, and Edmund Mills, James Switzer, and Abraham Kempner. I recovered judgment in the first lot of cases commenced in 1856, and writs of possession were issued on said judgments and I was put in possession of the property. I afterwards recovered judgment in the other cases and was put in posses-

sion of the property, most of it on the 6th of March, 1856. I continued in possession of said property until dispossessed by the decision of the Supreme Court of the United States, April 24th, 1876. During that time several parties tried to jump my possessions, but I have always applied to the court and dispossessed them. The improvements claimed by E. G. Malone I purchased soon after I bought out Abigail Sabin. I repaired the cabins, lived
92 in them three or four years, and then built my dwelling-house that my family has resided in and occupied up to last December. Soon after I purchased of Abigail Sabin I enlarged my fields and repaired and built new fences and took in ten or twelve acres more of ground on what is now the north side of Gaines avenue. Soon after I was put in possession by the writs above named I commenced building new hewed-log cabins. I built three double log cabins and afterwards built one more log cabin joining the property that had been occupied by Mrs. Julian. On the west side I enclosed it all with a good fence, on the east side of what is now Valley street, commencing near the bridge that crosses the creek south of the Hot Springs hotel and extending down to about two feet into the now Cohn building. Mr. Turnbull put up a theatre one hundred feet long, forty feet wide, and seventeen feet high. George Belding and I purchased this theatre of Turnbull in 1859, and George Belding afterwards sold his part of the house to me, and below the theatre, the same fall, I built a large room for a dining-room, and put up two good size log rooms in front of the dining-room with a hall between them, about six feet south of the south end of the theatre, and cut the theatre up into, I
93 think, thirty-two bed-rooms, afterwards making a two-story house for the purpose of boarding-house or hotel. About this time I enclosed all below the property that had formerly been occupied by Switzer between the street and the creek, west of the creek, down to the section line, and made a kiln of brick there. I made no other improvements of importance until after the close of the war. At the beginning of the war, including the houses that I purchased and recovered by suits of ejectment and built myself, I had twenty houses, one mill, one house used for a hotel, and one of the twenty houses was a row of houses of ten or eleven rooms that I recovered from Sumpter. During the war the hotel house, formerly the theatre, was destroyed by marauders and trespassers, so that I had to tear down the remnants to save what lumber there was. During the war the improvements that I had recovered of Burke that were on the east side of the road where the Nichols, Vaughn, and Ducker buildings now stand were destroyed by fire; they were burned by Federal troops. These troops also burned the row of houses recovered from Sumpter, and also the house that I purchased of Malone. In the spring of 1865 Mrs. Gaines fenced in nearly all the ground recovered from James Sumpter east of the
94 now Sumpter house. The houses formerly upon this ground were burned during the war. I had a number of the old houses that were left standing repaired so as to make them tenantable. Soon after repairing the old houses I caused to be fenced up

all the property between the Malvern road and Hot Springs creek down to the line to be used for a brick yark, and had the fences repaired for the fields that I had before the war, and cultivated and occupied the same until after the decision of April 24th, 1876. In 1870 Mrs. Gaines, one of the petitioners, built the Hot Springs hotel, which was the first fine hotel ever erected in Hot Springs. It cost about twenty-four thousand dollars and was the principal and leading hotel until the Arlington was built. The same year I built the house now held, under a lease from the receiver, by William Staats and also claimed by him before this commission, the said house being situated the second house below the Malvern crossing, on the east side of Valley street. This house cost five hundred dollars. In 1871 I built the barber shop north of the Hot Springs hotel, which cost about one hundred and fifty dollars. I also built
the office south of the Hot Springs hotel now occupied by
95 Dr. Taylor, which cost about four hundred dollars. I also, the same year, built the bakery, the first building south of Dr. Taylor's office, which cost about four hundred dollars. Soon after this year I built the house south of the now Malvern crossing, which is now held under a lease from the receiver and claimed by Rachael Bertsch. I next built the house and stables south of the now Cohn house, and which are now held, under a lease from the receiver, by Thall and others. These buildings cost about six hundred dollars. The next building south of the stable I bought from Cloyes. This building is now held by Julius Breytie under a lease from the receiver, and is also claimed by Breytie before this commission. I soon after bought of Leeson the house on the west side of the street just south of the house of Sutton, the cost of which is estimated at a thousand dollars. I also built three cottages north of the cemetery, which cost six hundred dollars apiece. I also built two storehouses south of the Garland house, which cost about nine hundred dollars. I also built two cottages on the Malvern road nearly west of the cemetery, one costing six hundred dollars, the other three hundred. I also bought a house of N. H. Cloyes south of these two cottages on the Malvern road for three hundred dollars. I also bought a blacksmith shop on the Malvern road. I also bought a stable of Mr. Bell on the
96 Benton road. In the year 1874 I fenced all north of the Benton road to near the east line and to what I supposed to be the east line and north on the east line away up into the mountain and thence west to include the hot springs obtained from Abigail Sabin. This fence made a complete enclosure of all the ground now claimed by me north of the Benton road. This was a good, substantial fence, except some portion of the mountain, where it was impossible to make a first-class fence. In addition to buildings put up by the petitioners in person I made fifty or sixty leases or contracts to various persons to put up buildings on the ground claimed and occupied by me. In a large portion of these cases my old buildings had to be torn away to make room for better buildings. I enlarged my residence by building eight rooms, which cost me about sixteen hundred dollars. I have resided continuously

upon the property claimed in the petition ever since the year 1852 until December last, a period of about twenty-six years, and during all that time the petitioners are the only ones that have occupied this ground as their own except a few negroes in the southeast corner of the quarter section, who have been holding adversely to your petitioners. With this exception there has been no one since I recovered these lands, in the year 1856, who has lived upon any portion of it and claimed or occupied the same as their own.

97 Your petitioners are and have been all this time the sole occupants in their own right. All other parties, with the exception of the negroes referred to above, that have lived upon the same have done so under contracts with your petitioners, recognizing and treating them as landlords. During all this time I believed that I had the title to said lands and have paid taxes upon said lands ever since I entered and paid for the same at the United States land office. I know of no one else that has paid any taxes upon said lands or ever pretended to give them for assessment. I so strongly believed that this property was mine and that I would get a title to it that I paid the taxes for the year 1875 only a few days before the decree of April 24th, 1876. I have been a *bona fide* occupant of these lands for more than a quarter of a century, and during that time I have exercised and had the same control over the lands claimed that any person could or would exercise over lands that they held a patent for from the United States. When A. O. Morgan, the United States receiver, took possession I was the first man on the reservation to turn over my property to him. I turned over all property held by myself, both that held in person and that held by my tenants.

98 Cross-examined by JOHN M. HARRELL, representing No. 1, claim of Algernon S. Garnett, M. J. Towle and wife, James O. Ducker, Rachel Burch, and sundry other conflicting claims:

3rd Q. You say your fence north of the Benton road fell short of the section line?

A. Yes.

4th Q. How far?

A. I cannot say exactly.

5th Q. Did it go beyond the ground of James O. Ducker?

A. Yes; it enclosed that ground.

6th Q. You use the word "enclosed," understanding what it means, and deliberately, do you?

A. Yes; I had it all under fence.

7th Q. Did you not merely build a line of fence between him and the road and stop there?

A. I enclosed every inch of that ground.

8th Q. You had Mr. Ducker under arrest for trespass about 10 days, had you not?

A. Yes; I had some trouble with him. He broke my fence down.

9th Q. Did you take the lumber that he had on that ground and appropriate it to your own use or cause it to be appropriated?

A. No, sir.

10th Q. What did you do with the posts he put there?

A. I never had anything to do with them. I do not know who removed them. I think I stopped him by injunction.

99 11th Q. How many buildings do you say you had possession of just before the war?

A. About 20.

12th Q. Where did they stand?

A. The theatre building stood south of the Hot Springs hotel, for one. I have mentioned all these places already in my testimony.

13th Q. They were destroyed during the war by fire?

A. Yes, sir; the theatre was getting destroyed by their tearing doors down, and so on, and there was a great deal of good lumber in it, and I tore it down to save it from being destroyed.

14th Q. Which of the buildings were not destroyed?

A. My dwelling-house was not. The church was not destroyed. Above there there were some few cabins along where the Citizen's stable is, from there down to the St. Louis saloon, that were destroyed. The buildings that I put up previous to the war, along down the lower end of the valley, were not destroyed. On the west side of Valley street there were 8 log cabins that I built that were not destroyed. There were three double ones and one with two rooms in it, making eight rooms in all. They commenced down about where Smith's mattress-house is and ran up north. They were about 20 feet apart.

Q. Are those buildings there yet?

100 A. No, sir; they were torn down in order to lease the ground. Some of them fell down, and I may have hauled them off or given them away. They ran up to the new Malvern crossing, and the north one a little higher, maybe.

Q. When did you fence in from the Malvern crossing down to the section line?

A. In 1858, after I built the log cabins. I fenced along in front of them, leaving a space between the fence and the cabins of 8 or 10 feet. It was plank fence; it was burnt up and torn away during the war.

Q. Did that fence form an enclosure?

A. Yes.

Q. Was there another fence in the rear of the house?

A. Yes; there was a rail fence between the Sumpter ground and the Burke ground.

Q. Whose property did you claim that to be in 1858—those cabins and that fence?

A. I was acting as agent for the Belding heirs, but I claimed the house that I put up as my own. They were put up and purchased with my own money.

Q. Those 20 houses that were standing there just before the war you claimed as the property of the Belding heirs, did you?

A. No, sir.

Q. Which of them did you claim as your individual property?

101 A. My residence and those log houses that I built.

Q. Did you claim the old theatre?

A. Yes; and the log houses south of the theatre. I built them—that is, on the east side of Valley street.

Q. State what you think those houses and all the property claimed by you was worth at that time.

A. The theatre cost me $1,400; the log houses south of it—I worked on them with my own hands—they are, all together, worth about $500, on the theatre side of the street.

Q. What were those buildings that were on the other side of the street worth, from the mattress-maker's up?

A. Labor was cheap when I built them; they were simple log cabins, one room, 16 or 17 feet square.

Q. Which was the most valuable improvement you owned at that time?

A. The dwelling-house.

Q. Which next?

A. The theatre.

Q. Did you own any other valuable improvement at that time besides the log houses, the theatre, and the dwelling-house?

A. Yes; the field that I bought of Mrs. Sabin. It is south of Gaines avenue—the biggest field. The north line of the fence

102 ran in Gaines avenue; on the west it ran out to the Malvern road; on the south to the line of the southwest quarter of section 33. The east line of the field was out somewhere beyond, where a colored man named Thal lived at that time. It was much bigger than it is now, because part of it ran down into section No. 4. I think more than half of it was in section four. It included where that house was and several other lots up there. My purchase included lots around my present dwelling-house and a little field, in woods, where the cemetery is. I fenced in 10 or 12 acres north there and drew the fence in so as to turn over to Mrs. Sabin what was outside of what I entered. I drew the line in on the east to make it more square. I fenced in what lies north of Gaines avenue a year or two after I bought it, as soon as I knew where the lines were.

Q. Was it enclosed when you bought it?

A. It was.

Q. What did you consider it worth?

A. I paid $700 for it. I consider it worth all of that.

Q. What other valuable property did you own at that time?

A. I have stated all about that. I had a kiln of brick made on the east side of Valley street, between that and the creek.

103 That was the first brick-kiln I had made; that was made before the war. After the war I contracted with Cloyes to make brick for me and gave him a percentage of what brick he made. On that thin strip of ground, where the Cincinnati house burned down and where the Surprise house stands, was made two kilns of brick, and that was done since the war.

Q. Which was the property of the Belding heirs?

A. I have a transfer from them; it is all mine.

Q. Were those transfers made prior to your petition in bankruptcy?

A. Very recently; since they have been hunted up to give me trouble.

Q. Did you put in any of this property in your petition in bankruptcy?

A. I did not. I consulted my lawyer, Judge Watkins, who knew all about it, and he said it should not go in. I went through bankruptcy and was honorably discharged seven or eight years ago.

Q. When did you file your petition in bankruptcy?

A. I cannot recollect the date.

Q. Did you transfer it then to the Belding heirs?

A. No, sir.

Q. You did not see proper to claim it when you went into bankruptcy?

A. I did not.

Q. You bought certain improvements that were erected?

A. Yes.

104 Q. Were they within these enclosures that you speak of?

A. Yes; all except the part of Mrs. Sabin's field, which I gave back to her.

Q. In whose right do you make your claim now to this property?

A. In the right of Maria Gaines and myself.

Q. Did the Belding heirs file any petition?

A. No, sir; I am controlling it all myself.

Q. Where was this Cloyes house that you bought?

A. Part of the brick yard there.

Q. Where was the blacksmith shop?

A. It is there now. I bought it from Cloyes. It was considered in the $300. There were some improvements that he had put on it that I bought of him. It was considered in the $300.

Q. You say that since you recovered these lands, in 1856, no one has resided on them except yourself or owned them?

A. I do not think that anybody has ever claimed them in their own right as we have.

Q. What lands are referred to in your petition?

A. The southwest quarter of section 33, township 2 south, — 19 west.

Q. How do these people happen to be there unless they have resided on it?

A. They were not there in their own right.

Q. Some of them have built improvements upon it, have they not?

105 A. Yes.

Q. And without your assistance?

A. They generally leased the ground from me.

Q. Did M. W. Towle lease any from you?

A. He made a bargain with my agent to lease it. I have no written lease.

Q. Did you contribute any money to the building of the improvements erected on that ground by Mr. Towle or give him any assistance of any kind?

A. No, sir.

Q. Who built the Salmons house, near the Methodist church, that Mrs. Burch lives in?

A. Allen Salmons.

Q. Did you agree with him to let him have that 20-feet alleyway leading down from his house?

A. No, sir; I might have agreed to let him use it. He agreed that he would keep off of the quarter section, and I believe he did. I do not think it is on that quarter section at all.

Q. The new Valley house, now used as the court-house, did you contribute any money or any assistance to the erection of that building?

A. Yes, sir; I loaned the old man fifty dollars, and he said he wanted to put it in that building.

Q. Did you know him very well?

106 A. He had been a very good tenant and paid punctually and he leased the ground. I have his note for $50 for the money I lent him. He wanted to keep it, and I told him to keep it awhile.

Q. His note is out of date, is it not?

A. I do not think it is.

Q. That is all you had to do with erecting that house?

A. Yes.

Q. The house of Mr. Ducker, the three-story house on the corner of Malvern crossing, did you contribute money or assistance to the erection of that house?

A. No, sir.

Q. The stable that Gillis had and sold there, did you contribute any money to build that or any means of any kind?

A. Yes; I furnished all the lumber.

Q. You have stated all the buildings you have erected since the war, have you?

A. Yes; I aimed to name every one that I erected. I show vouchers for the building and leasing my house to Burch, and so on. Then it was turned over to the receiver. He has held possession. Those are the houses I built myself. The Gillis property was built by me under written contract.

Q. Did you make any distinction in your testimony between the buildings you erected and those built by old tenants?

107 A. I have not said a word about my tenants' building; only that I had 50 or 60 tenants who leased. I described my own buildings.

Q. You said in your testimony that you were the first man that turned over that property to the receiver. How did you turn it over?

A. I had an interview with Mr. Morgan, in which he told me that he would live up to the instructions of Judge Gray, and that my tenants should have the preference in the right to lease. I thought

maybe I could get a chance to lease my houses. I tried him the second time, and he was very positive that my tenants should have the preference. I told him I would throw no obstacle in his way, and that if he would send his clerk around with me we would go around, and I would show him every house I owned and tell him who lived in it and turn them over to him, which was done. Captain Peck went around with my son, who was attending to the collection of the rents for me, and he turned the houses over to him. My tenants then leased from the receiver. The houses were not turned over to the tenants.

Q. The receiver preferred to lease the ground to the occupants?

A. Those were his instructions.

Q. What did you lease from the receiver?

A. I first leased my dwelling-house—my wife did.

108 Q. How much property did you lease in connection with your dwelling-house?

A. There was a little difference between Mr. Morgan and me. I got him to make out the application himself in his own handwriting. I meant it to include all my lots, but he never would give me the lease. I paid the monthly rent that he put on my dwelling-house—all that was under fence. I told him I wanted to take a lease for the whole of it, but he did not want to give it to me, but he never leased it to anybody else. People came to me to lease from me, but I never had any transaction since, except to sell Mr. Wilson a stable. I do not know whether it was a few days before the decision of the Supreme Court or a few days afterwards. I disclaimed owing anything till the act of Congress was passed giving me a show for my possessions there.

Q. You leased your residence at first?

A. I rented it. Afterwards, as the tenants went away, some cottages that I had I offered to Mrs. S. H. Stitt and let her lease them. At the north end of the cemetery there were three cottages and 2 store-rooms, and it may have included this Surprise house. I am not sure but there were six in all. They were on the east side of the creek. I leased those; then I leased three houses to

109 Albert Gaines, Dr. Taylor's office, and the Smith house, on the west side of Valley street, the two cottages and the Cloyes house to Mrs. Williamson.

Q. What two cottages were those?

A. They were the two lying between the Malvern road and Hot Springs creek, opposite the cemetery. Those cottages Mrs. Williamson, my daughter, leased, at my request, from the receiver. They were given to her. I bought a little shanty that was back of the Burch house; that was his own transaction. I think he leased that from the receiver.

Q. You say you have filed in this case the transfer from the Belding heirs to yourself?

A. I will do it. I have the conveyance of recent date. One was signed in Texas and the other here. Albert Belding signed his, George signed his, and Henry signed his. It has been within the last three months.

Q. Your plat shows how far your line runs, does it?
A. Yes; it includes Wilson's stable, the Hot Springs hotel, and the barber shop this side.
Q. Did you pay any taxes on this property in your own name?
A. No, sir; in the name of the Belding heirs.

Questions by Mr. CURL, representing Sumpter, Kemper, and other claimants:

Q. State if you acquired any possession west of Hot Springs creek originally by virtue of purchase, or was it all by virtue
110 of the Beldin heirs' certificate of entry.
A. I bought the Malone house, that covered the ground where the St. Louis saloon now stands, in 1852, soon after I bought Mrs. Sabin's ground.
Q. Any others?
A. No, sir; not on that side.
Q. Then the balance of your possessions on that side were acquired by virtue of the certificate of entry of the Belding heirs?
A. No, sir. I took possession of the vacant ground and built those log cabins.
Q. My question is if the balance of the possessions you acquired on the west side of the creek were acquired by virtue of the entry of the Belding heirs.
A. Yes; except that there was a good deal of vacant ground that I took possession of there.

Re-examined by Mr. BENJAMIN:

Q. State whether some of the ground occupied by Mr. Runyon and Mrs. Beldin was not turned over to you by agreement without suit.
A. Yes; that was vacant ground. Mrs. Beldin had a house this side of the well and Runyon had a cabin south of the Kempner property there.

And further saith not.

FEBRUARY 11TH, 1878.

In the Claim of WM. H. and MARIA GAINES, No. 784—Continued.

ROBERT B. RUNYON sworn and examined.

111 Examined by Mr. BENJAMIN:

Q. State your name, age, and residence.
A. Robert B. Runyon: age, 26, and reside at Hot Springs.
Q. How long have you resided at Hot Springs?
A. I was raised here.
Q. Are you acquainted with Wm. H. Gaines and wife?
A. Yes, sir.
Q. State whether you know anything about the possession that Lawson Runyon had upon this quarter section, where it was, and who he was.

A. He was my father; he did have possession several years ago.
Q. Where was it?
A. It was in the lower end of the valley, at the foot of what is called Gwinn hill. There is a house on that particular spot now, and, as well as I can recollect, it is fenced up.
Q. North or south of the church?
A. North of the church.
Q. Who did he turn that possession over to?
A. Mr. Gaines.
Q. Who has had possession and control of it since that time?
A. Mr. Gaines, I think—Wm. H. Gaines.
Q. You have known it all the time?
A. Yes, sir; have never known any one else owning or control-ing it.

112 Q. State what street it comes up to.
A. It comes up to the main street, Valley street, and runs up on the hill to the section line.

Q. About how many feet upon the street was it?
A. I suppose it is 60 or 75 ft.
Q. State whether Mrs. Beldin had a claim.
A. She had a claim this side of that.
Q. State whether you know of Abraham Kempner ever having any claim.
A. Yes, sir; I know of his claim there; it is adjoining that same lot and fronted on Valley street.
Q. Any house upon it?
A. Yes, sir.
Q. How far up did it run?
A. Some 100 ft., I guess.
Q. State whether you know to whom Kempner turned it over.
A. I think Mr. Gaines has had possession of it. A. I don't recollect; it was a good many years ago.
Q. And since that time he has had continuous possession?
A. Yes, sir.
Q. Do you know anything about the claim of Mrs. Beldin?
A. Yes; she had a claim right this side, commencing at the well; it fronted on the Valley street and ran back to the section line.

113 Q. How many feet in front?
A. Probably 125 ft.

Q. Who has been in possession of that claim for the last ten years?
A. William H. Gaines.

By Com. COBURN:

Q. What improvements are on it?
A. When Mrs. Belding owned it there was a frame house on it of some four rooms; the front of it was weatherboarded; there was a well between that and Kempner.
Q. Do you know anything about Mrs. Julian having any possessions on that street?

A. I recollect about the house very well; it is somewhere just below what is known as the Valley house, where Capt. Toale's office is now; was a small log cabin on it 16 by 18 ft. square. Some time afterwards Mrs. Gaines built an addition to it—another room. This was after Mr. Gaines got possession of it. He made a double log cabin of it.

Q. State whether you knew anything about Patrick Burke having any possession.

A. That is before I recollect. I know where they were.

Q. State who has been in possession, as near as you can recollect, of the ground.

A. Mr. Gaines.

Q. Any house on it?

A. Yes, sir; a great many houses on it now.

114 Q. Any there before the war?

A. Yes, sir.

Q. Who had control of those houses?

A. Major Gaines. No one else set up any ownership to them, to my knowledge.

Q. State whether you know anything about the possession of James Sumpter at one time; and, if so, where it was.

A. It was situated about opposite the lower corner of the Hot Springs hotel; on the opposite side of the street—the houses.

Q. That extended up how far?

A. As far as Dr. Hobson's office; somewhere near there.

Q. Who was above it?

A. Mr. Kempner had a store above it, and also Mr. Beldin above there.

Q. What became of the improvements on it?

A. They were burned down during the war, and have never been rebuilt since. Some few houses have been put up on it, but most of it has been vacant since.

Q. Do you recollect anything about Major Gaines being put in possession of it?

A. Yes, sir.

Q. Do you recollect whether Kempner claimed his store or Major Gaines?

A. I think they belonged to Major Gaines and was rented to Kempner. He kept store there several years.

Q. Where was George Belding's storehouse?

115 A. About where the livery stable is now; or, rather, where the St. Louis saloon is.

Q. Do you know anything about the possession of Mills and Butler?

A. Yes, sir; I recollect that the Mills store was right where the Sentinel office is—Goode's drug store.

Q. Did Mrs. Butler have any house there?

A. Her house was the next house below the printing office.

Q. Do you know anything about Major Gaines having possession there?

A. Yes, sir; he had possession there since I can first recollect.

Q. State whether he has had control and acted as owner of it since that time.

A. Yes, sir; he has.

Q. Anybody else claim to own it or control it?

A. There may be somebody who claimed it, and probably may have controlled it some.

Q. State where the Barksdale possession was.

A. That was just above the printing office, about where Wilson's stables are.

Q. State whether you know where the Switzer property was.

A. Yes, sir; right where a man by the name of Allen is living now. The house is standing yet—the back part of it.

Q. Did he have an enclosure there?

116 A. Yes, sir. I suppose there was a right smart enclosure of some 20 ft. front; had a garden spot there; it run back to the creek.

Q. Do you know anything about Sam. and Oney Macklin having a claim?

A. Yes, sir; Oney was right where Bertsch'- saloon is now. It fronted on Main street and ran back to the creek.

Q. State whether Switzer's claim did not join Oney's claim.

A. I think it did.

Q. And extended down below?

A. Down below the Allen house.

Q. State whether you know anything about this property being enclosed between the creek and the Malvern crossing and further down to the section line at any time and being used for any purpose.

A. It was enclosed and there was a brick yard upon it at one time. It has been enclosed ever since I can first recollect. My father cultivated a portion of it himself.

Q. Who was using it afterwards as a brick yard?

A. Mr. Lecroix, but he was working for Mr. Gaines.

Q. Do you recollect anything about the possession of Sabin?

A. No, sir.

Q. Do you recollect anything about the theatre building?

117 A. Yes, sir; it was just directly below the Hot Springs house and extended down to what is known as the Cohen house now and back to the creek.

Q. State whether there was any log house there.

A. There was some log houses below there—just below where the Cohen house is now.

Q. Can you describe anything about the mill on the other side of the creek?

A. I just recollect about it.

Q. Do you know anything about what improvements were on the east side of the creek between the Malvern road and — before the war and who had possession of them?

A. There was a log cabin there belonging to Mr. Gaines, and a colored woman lived in it, right at the crossing.

Q. Any other improvements below there on the same side that you recollect of?

A. Not that I recollect of.
Q. Was there not a house that Abe Peters lived in?
A. Yes, sir; below the creek—just below the corner.
Q. Was there any fence up?
A. That lot was all fenced up.
Q. State whether you know anything about the old Sabin field and fence and where it ran.
118 A. It started from the Malvern street —, where the cemetery stands now, and ran back to near the depot.
Q. And where did it go then?
A. Then from there up to the foot of the mountain.
Q. You say it ran east to near the depot?
A. Yes, sir; and then north, or rather northeast.
Q. And ran up to what place on the mountain?
A. Up to the line.
Q. And that was all enclosed?
A. Yes, sir.
Q. And from this east side of the fence it was fenced up to the residence of Major Gaines?
A. Yes, sir.
Q. And divided up into different lots?
A. Yes, sir.
Q. Who lived there at that time where Major Gaines' old residence is?
A. He lived there.
Q. How long has he lived there?
A. Ever since I can recollect.
Q. State whether he has been the ostensible owner and had control of those premises fenced up that you have described here on the street.
A. Yes, sir; he has.

Cross-examination.

By Mr. HARRELL:

Q. What is your father's name?
A. Lawson Runyon.
119 Q. How old are you?
A. Was 26 on the 6th of January.
Q. You have known Major Gaines all that time?
A. Yes, sir.
Q. You have been living here all that time?
A. Yes, sir.
Q. And Major Gaines was the one who had possession of these improvements you have described?
A. Yes, sir.
Q. Did you ever hear of the Beldin heirs?
A. Yes, sir.
Q. What improvements did they have?
A. The same improvements.
Q. Were they Major Gaines'?

A. They belonged to the heirs.
Q. How do you know?
A. That has always been my understanding. He has always had rental of them. That was what I was alluding to.
Q. What became of these improvements?
A. They were torn down and moved away for more substantial buildings.
Q. While he had control of them?
A. I think so.
Q. Who put up the buildings on them?
A. Different parties leased the ground. He also built some.
Q. Which ones did he build and which the other parties?
A. I don't know. I never paid much attention.
120 Q. Do you know who the Belding heirs were, how many, and their names?
A. George, Albert, Henry, and Maria Gaines.
Q. Where is Albert Beldin?
A. I don't know; Henry is in Texas; it has been three years since Albert was here; Henry was here about a year ago, probably longer.
Q. George Belding lives here?
A. Yes, sir; and Mrs. Gaines.
Q. Is George Belding's name in this claim of Major Gaines'?
A. No, sir.
Q. He has a separate claim?
A. Yes, sir.
Q. Are those heirs of age?
A. Yes, sir; all of them. Albert is over 40, and I think Henry is somewhere near 40; I do not know how old George Beldin is; he must be 38 or somewhere along there.
Q. Do you know Mrs. Maria Gaines?
A. Yes, sir.

By Mr. WALSH:

Q. Can you point out to-day any of those buildings that you have described?
A. I can point where they stood.
Q. Are any of them standing?
A. The Switzer house is; it is where the Allen house is now.
Q. Do you know of your own knowledge who constructed the house?
A. I do not.
121 Q. Can you tell me of any house that Major Gaines built, of your own knowledge?
A. He built that house where the confectionery is, this side of the Hot Springs house. I recollect about his getting lumber. He also built the Hot Springs hotel.
Q. Don't you know that Mr. Stitt furnished the lumber and built it?
A. I don't know about that.

Q. Can you point out one house that Major Gaines built or paid for building?

A. I don't know any that are standing now.

Q. You stated that he was in possession of that house and lived there all the time. Is it not a fact that he lived on his farm and that other parties have had possession of the house from time to time?

A. I don't think he has entirely left his house on the hill; ever since I can recollect he has been living up there.

By Mr. CURL, as attorney for Sumpter:

Q. Were you present when those premises were turned over to Major Gaines?

A. I don't know as I was present; I recollect of my father speaking about it.

Q. When was that?

A. Seventeen years ago. I don't recollect exactly; I was small.

Q. What was there in the shape of improvements when they were turned over?

A. Some log cabins.

Q. Where did they stand?

122 A. Right north of the Methodist church.

Q. Did Mr. Kempner have a garden running down to the foot of the hill towards the Gaines house?

A. No, sir.

Q. Do you know how Mr. Gaines got possession of the Gaines house?

A. No, sir.

By Mr. BENJAMIN:

Q. You knew he had possession?

A. Yes, sir.

By Mr. CURL:

Q. Do you know when he got possession?

A. No, sir.

JACOB W. PARKER sworn and examined.

Examined by Mr. BENJAMIN:

Q. State your name, age, and residence.

A. Jacob W. Parker; age, 70, and reside at Hot Springs.

Q. State how long you have resided here.

A. I came here the 6th of March, 1853.

Q. Are you acquainted with William H. and Maria Gaines?

A. Yes, sir.

Q. State whether you was the Jacob W. Parker that a writ was served upon for the possession of a mill and where it was.

A. I forget the writ. I know where the mill was; I gave it up.

Q. Was not a writ of possession served?

A. I suppose so; I gave it up, anyway.

123 Q. Where was the mill?

A. It stood right above the Malvern crossing; the road then crossed differently.

Q. Where Shipley's store was?

A. About the north of Shipley's store; ran right through it, I think; had a post office there. I was postmaster in the house where my son's butcher shop is—right in the fork of the road. I delivered the mail from my north window.

Q. Whose house was that?

A. I first rented it from Wm. Gardner, then Wm. H. Gaines.

Q. Gaines came in possession of it while you were there?

A. Yes, sir.

Q. About the time of the mill?

A. I don't know about that; perhaps about that time.

Q. Look at that and see if it is your lease (handing witness paper).

A. Yes, sir.

Q. What improvements were there in the forks of the road at that time?

A. There was a frame building.

Lease offered in evidence from Wm. H. Gaines to Parker, dated 8th December, 1857, and marked Exhibit No. 1.

Q. Do you know Peter Burke?

A. Yes, sir.

Q. Did he have any possessions here after you came, in 1853?

124 A. I leased from Peter Burke and Wm. Gardner, jointly. I think there was four rooms; I suppose 16 or 18 feet front. There was a yard they had fenced below that; it run down 50 or 60 ft., right south of these rooms.

By Com. COBURN:

Q. Anywhere near the Malvern crossing?

A. It is on the west side I am speaking of; it will go below the Malvern crossing now.

Q. What year?

A. Must have been in 1854 or 1855.

Q. That he was in possession?

A. I mean Burke and Gardner.

Q. When were they dispossessed?

A. It must have been in 1854 or 1855. I paid Gardner rent for a year and a half.

Q. Here is a certified copy of the writ dispossessing you.

A. Yes, sir. What is the date?

Q. It was issued on the 3rd of March, 1856.

A. I leased from Major Gaines; the date of the lease will show.

Q. This shows the date upon which this writ was served for these mills. I was trying to fix the date in your mind when Burke was put out, and whether it was about the same time.

A. I was appointed postmaster under Burke. I was his deputy

in the spring of 1854, and he went to Texas right off, and in
125 a short time I was appointed postmaster. It was about the same time, I reckon.

Q. About the same time you were put out?

A. Yes, sir.

Q. State whether you have known these premises since.

A. Certainly.

Q. Who has been in possession of them since?

A. Major Gaines.

Q. State whether Sabin had any possession on this street or not.

A. Not that I ever knew of.

Q. Do you know what became of the Burke property?

A. It was burnt up.

Q. When?

A. In 1864, I reckon; during the war; and a portion was rebuilt again, I think.

Q. You don't recollect anything about Abigail Sabin having any possessions upon this street?

A. No, sir.

Q. Do you know whether Major Gaines built any houses after he got possession of this property before the war; and, if so, where?

A. Yes, sir; built four rooms, about 16 by 18 ft., with a shed-room back; extended from what we called then the Sumpter property, and ran south; log houses.

126 By the CHAIRMAN:

Q. That was on the other side of the street?

A. West of Valley street.

Q. The Burke property that you were speaking of before is on the east side?

A. All on the west side; it was Gardner and Burke's, but they turned it over to Major Gaines afterwards.

Q. Do you know whether Major gaines had, any time before the war, this property on the west side fenced up?

A. There was a fence on the west side on the hill, but who put it up, Major Gaines or Sumpter, I do not know.

Q. State whether you know anything about Major Gaines having the east side of the street enclosed as far down as Belding's.

A. It was enclosed, but who had it done I do not know. A man by the name of Switzer had a garden and a house, and I think he joined onto old Olney on the north.

Q. Then below that?

A. Nothing else until you come to a brick yard.

Q. Was it enclosed?

A. I think it was.

Q. Who had the brick yard?

A. Lecroix worked it. I always called it George Belding's when I came down. I never knew anybody else but he and Gaines.

Q. How long have you known this property?

A. Ever since 1853.

127 Q. State whether Major Gaines had been in possession and control of this property and leased it as the ostensible owner since he has been put in possession of it.

A. There was trouble about a portion of it—this Burke and Gardner part. Major Gaines has been in possession as far as I know; he has been the ostensible owner.

Q. And you know of no one controlling it but Major Gaines?

A. No, sir.

Q. Those persons building on it built how?

A. They built upon a lease.

Q. From Major Gaines?

A. Yes, sir; but they repeatedly said he had no right and said they were not going to pay anything.

Q. But they went on there, so far as you know, under a contract or lease?

A. That is my understanding.

By Mr. WALSH:

Q. Did you ever hear of the Government owning any property down there?

A. I have heard that for four years, almost.

Q. How many houses on the reservation constructed by Major Gaines were standing on the 24th of April, 1876, that you know of?

A. I don't know of any except where he lived. He did build, but they were burnt down.

By Mr. HARROLL:

128 Q. Do you know a man by the name of Boatright who had possesion of the forks there?

A. Not in the valley; never knew him.

Q. Don't you know that Boatright has been holding possession in this fork adversely to Gaines?

A. I do not know him.

Q. Do you know J. H. Nichols?

A. I know the old sheriff.

Q. What was he before he was elected sheriff?

A. He was a blacksmith right on the place I have described.

Q. Who built that shop?

A. I think Nichols did; he claimed it; was in possession of it.

Q. When did he build it?

A. Three years ago.

Q. You were asked if the property on the west side of the creek was enclosed, and I understood you to say that you did not know whether it was or not.

A. There was a fence built by somebody. I don't know whether Mr. Sumpter claimed it as his fence or Major Gaines, or whether it was a general fence; but there was a worm fence there made of rails.

Q. And you say it enclosed some log cabins of four rooms of some 18 ft. front each; in what year?

A. They were put up in 1866.

Q. And below them what was the distance before you came
129 to vacant ground, upon which there was no house?

A. There was a space of 20 or 30 ft.; but after that Maj. Gaines put up a house adjoining the one south.

Q. From the lower side of the new house about how far was it to the next improvement?

A. It was an old house; the new house was north of the old one. Below this lot, which I leased from Gardner and Burke, Major Gaines put up on the west side three or four houses, one right after another, of the same style, below Little & Jenkins' store. If you start at Little and Jenkins' there was a post office, then two-story rooms, a ware-room, and a saloon, all covered over with the same roof.

Q. They were log cabins?

A. A frame building.

Q. In what year?

A. When I went there, in 1853.

Q. Who owned them then?

A. Burke and Gardner.

Q. How far from those houses to the next house?

A. 20 or 30 ft., and then Major Gaines put up one adjoining the house still below and left a space between the two.

By the CHAIRMAN:

Q. Whose house was that?

130 A. It was known as the Julian, but, as I understand, it was Belding's or Major Gaines'.

Q. What was the frontage of that house?

A. 16 or 18 ft.

Q. How far below that before you came to another house?

A. I cannot tell, but old Mrs. Belding lived there when I came, and lived there for years afterwards.

Q. And who owned that?

A. She, of course, owned it. She lived there, and she is the mother of the Beldin heirs.

Q. How far below her house to another house?

A. It is right where the house now stands—the adjoining house.

Q. What house is that?

A. We always called it the Kempner house.

Q. Who has the store in it?

A. Nobody; a private family is living there; just this side of the Methodist church; the first house; the house with the gallery on it.

Q. The house that you speak of as being there now——

A. That stands as it was; it stood through all the trouble.

Q. When was it built?

A. Before 1853.

Q. Is that the Kempner house?

A. Yes, sir.

131 By Mr. CURL:

Q. I understood you to say that the Burke and Gardner buildings—the upper ones of them—stood where Little and Jenkins' store is?

A. That is my judgment.

Q. Do you recollect whether Mr. Sumpter had a stable in his lot that he had fenced?

A. I think he had a stable in the south end of his lot. There was a big gate that led up to his stable.

ALFRED WHITTINGTON sworn and examined.

Examined by Mr. BENJAMIN:

Q. State your name, age, and residence.

A. Alfred Whittington; age, 34, and reside at Hot Springs.

Q. How long have you resided there?

A. Since 1851.

Q. Are you acquainted with Major Gaines?

A. Yes, sir.

Q. And Mrs. Gaines?

A. Yes, sir.

Q. Describe the improvements that were formerly known as Flowers and Barksdale.

A. They were right on the west side of Valley street, as near as I can remember, just south of the Earl house, and ran down 100 ft.—maybe more.

Q. Who had improvements immediately south of that?

A. South of that came Mills' store.

132 Q. What improvements did he have?

A. He had a storehouse on the street, and back in the yard was his residence. I think it belonged, or did afterwards, to Mrs. Butler; I don't recollect what her full name was. The house was occupied soon after the war by the old Burgamer store. It is right along where the printing office is; it takes in about that property.

Q. Do you recollect any house below Mills' claim owned by Major Gaines?

A. George Belding had a store in the next house south of Mills; it was right adjoining the Butler yard.

By Com. COBURN:

Q. This is all on the west side?

A. Yes, sir; and then right south of Beldin's storehouse I think Kempner had a store—about where the livery stable is now.

Q. Below that who occupied the ground?

A. Sumpter's ran on down below Hobson's office; the old well used to stand right in front of it.

Q. The old well is in the street now?

A. Yes, sir; it was then in the neighborhood of Hobson's office.

Q. And how far did it run down?

A. The old well was filled up. The lot extended some hundred feet further down, running towards the hill.

Q. Who was below Sumpter?

A. Just below that, on the same side of the street, was a
133 row of one-story buildings; old man Gardner and Burke had a store there; and then some distance below that house came Mrs. Julian; then the next house I remember is the Kempner house; a portion of it stands there yet.

Q. Do you recollect the Runyon house?

A. No, sir.

Q. Do you know whether Abigail Sabin had any possession above there, on the east side, at the forks of the road?

A. There was a house nearly opposite Kempner, where Switzer used to have a grocery. I never knew anything about Sabin's shop there. I never knew him at all.

Q. Where did the road cross in the forks?

A. It must have run right in where Breitie's saloon is, some 80 feet this side of the Malvern crossing. It ran through Breitie's saloon, taking in a portion of Shipley's store.

Q. State whether there was any improvements in the forks of the road.

A. There was a log house that stood there, with two rooms and a hall between and a gallery on one side. On the north side of the Malvern crossing was an old mill. The first man I recollect in that house in the forks of the road was old man Parker. Several other parties lived there afterwards; a man by the name of Davis lived there once.

Q. Do you know anything about the possession of old Oney?

134 A. Yes, sir; she had a house just below to the left, on the same side of the street. She had a little garden.

Q. Can you give the present location?

A. I should judge it to be right where Bertsch's store is; a little below, perhaps, but right in that neighborhood.

Q. Who occupied below?

A. A man by the name of Switzer had a house in there a little piece below.

Q. Do you know what became of that house?

A. No, sir.

Q. Do you know anything about a brick yard being enclosed below there?

A. Below there a house stood as long ago as 1853, which was burned; then afterwards there was a brick yard in that same enclosure.

Q. The ground was occupied and in use?

A. Yes, sir.

Q. Do you know who by?

A. I do not.

Q. Do you know anything about Major Gaines coming in possession of this property and remaining in possession?

A. Only from hearsay.

Q. Do you know of his being in possession and being the ostensible owner and control-er of it?

A. I do not know as I do, only portions of it. There are some portions that Maj. Gaines had possession of that I know.

135 Q. Do you know anything about Major Gaines having built the Hot Springs hotel?

A. To say that I know it, I do not; it is generally believed that he built it.

Q. Do you know anything about the old Sabin field?

A. Yes, sir.

Q. Can you give a description of it as to where it went?

A. It commenced at the southwest corner of the cemetery or Malvern road and ran down to about opposite or probably a little below the old city hotel, and then run back towards the depot; it then run along what is known as the Benton road, as near as I can place it, until it got up to just in back of where Carhart has a residence.

Q. State whether the ground running up towards the mountain was not fenced up.

A. Yes, sir.

Q. Who was it fenced up by?

A. Major Gaines.

Q. Who has possession of this field—the control of it?

A. After Major Gaines got possession of the old residence there I think he had from that time.

Q. When was that?

A. Some time about 1852 or 1853. I know that Mrs. Sabin lived there a long while.

Q. And Gaines has been living there ever since?

136 A. Pretty much all the time since.

Q. So far as you know he has the control of that field and all those houses?

A. Yes, sir; up to the time they were thrown out into the woods by the fences being thrown down.

Q. When were the- thrown down?

A. When the Gaines avenue was put through.

Q. Up to the time of the decree or since?

A. I don't remember whether it was just before or after. It has been the general understanding that they belonged to Major Gaines.

By Mr. HARROLL:

Q. Describe where the fence ran.

A. I could not say anything about the back fence over the hill. I never was up there; a garden was there.

Q. How far did the garden extend back?

A. It was not on Valley street; I am speaking of the Benton road. His garden fronted on the Benton road.

Q. Back of his house?

A. Yes, sir; the garden ran back from the Benton road to his house.

Q. How far from his house eastward did the garden extend?

A. I don't know as I could tell; I should judge the garden extended from the house in a southerly direction.

Q. Do you know where the line of the Hot Springs reservation is?

A. No, sir.

137 Q. Do you know whether he had any improvements in the rear of his house?

A. His stable lot ran back.

Q. How far back?

A. It ran back to opposite a little house where Irish Jimmie use to live. The road ran between Jimmie's and Major Gaines'.

Q. And took a turn toward the mountain?

A. Yes, sir.

Q. And then turned towards the depot?

A. Yes, sir.

Q. State where John Sammons' blacksmith shop was in the fork of the road.

A. John Sammons has had two or three shops.

Q. The one he sold to Nichols?

A. I don't know as he sold any to Nichols.

Q. And one he sold to Boatright?

A. I don't know as he sold any to Boatright.

Q. Where did you say Mrs. Belding lives—the old lady?

A. She lived on the hill where George Belding now lives.

Q. Lived there during the war or at the end of the war?

A. No, sir: I think she was dead before the war.

Q. Where did she live when you last knew her?

A. My impression is that she lived with Geo. Belding on the hill,

By Mr. WALSH:

Q. How many houses were on the reservation before the fire of May or June, 1864, that were built by Major Gaines, to your

138 knowledge?

A. I don't know that Major Gaines ever built a house in his life.

Q. Or knew that he had them built for his own use and benefit?

A. The one where he lives.

Q. What is it known as?

A. The Gaines cottage.

Q. Will you swear he built it?

A. He was living there.

Q. Point out one other building on the reservation before the fire that he constructed except those little cabins known as the Gaines cabins on the road as you go down.

A. I don't know that Major Gaines built any. I don't know whether those cabins are there now or not.

Q. Is it not a fact that nearly all the buildings spoken of were built by other parties?

A. No, sir: I could not say that.

Q. I will ask you how many buildings were on the reservation on the 24th of April, 1876, that were constructed for his own use and benefit.

A. I think the Hot Springs hotel.

Q. Is it not a matter of fact that Stitt furnished the material for that hotel?

A. My understanding is that Major Gaines built the house and rented it.

Q. Do you know of any other?

A. No, sir.

By Mr. BENJAMIN:

139 Q. Do you know who put up all those buildings down there?

A. No, sir.

Q. Do you know that Major Gaines was acting as agent of the Belding heirs, and did you not hear Gaines say that he was agent of the Belding heirs?

A. I never heard him say so.

JACOB W. PARKER recalled:

I desire to state that the log cabins spoken of in my testimony were built before the war—in 1858 or 1859.

ABRAHAM PETERS sworn and examined.

Examined by Mr. BENJAMIN:

Q. State your name, age, and residence.

A. Abraham Peters; age, 45, and reside at Hot Springs.

Q. How long have you lived here?

A. 26 years.

Q. Are you acquainted with Major and Mrs. Gaines?

A. Yes, sir.

Q. State where you resided here before the war.

A. I lived with Mrs. Sabin out there at the grave-yard four years.

Q. Whereabouts is that?

A. Near 300 yards below the grave-yard. There is a two-story building there now; a kind of a yellow house; the City hotel.

140 Q. State whether you know anything about this Sabin field spoken of here and where the fence ran.

A. Yes, sir; Major Gaines had a garden there.

Q. Where was the garden?

A. On the right-hand side of the road. I think it ran down about 250 yards, one the same side of the grave-yard.

Q. Who fenced on the other side of the Benton road towards the mountain?

A. Major Gaines did.

Q. You have heard him testify in regard to these old improvements and where they were situated. Is that testimony substantially correct according to your recollection?

A. About the log buildings?

Q. Yes, sir.

A. Yes, sir.

Q. On Valley street?

A. On the right-hand side.

Q. Who had control of those buildings?

A. Major Gaines.

Q. Do you know how long he has had control of this property?

A. He built them before the war.

Q. And has had control ever since the war?

A. Yes, sir. He has been renting them out or occupying them since.

Q. All this ground from Barksdale down?

A. Mr. Sumpter came in there.

Q. Below how is it?

A. Suppose all below was under his control, as well as I can recollect—all below Sumpter.

141 Q. And no one else?

A. No, sir.

Q. How about the east side of the street?

A. At that time there was a vacant space there; I don't believe there was any building on it next to the corner road where you go across the street.

Q. How about below?

A. Below this was the Sammons blacksmith shop; next was Oney, and next was Mrs. Switzer. Sammons' shop was under the control of Major Gaines. I don't know whether he had anything to do with the Oney building. The brick yard below the Switzer building extended to the street.

Q. Has Major Gaines re-ided here with his family?

A. He has been here ever since I have—26 years. I used to drive his family around.

Q. His family would be here all the time?

A. Yes, sir.

By Mr. HARRALL:

Q. How do you know that Major Gaines controlled these various houses?

A. From what others said.

Q. Do you know whether Mr. Gaines sued Mr. Nichols, the blacksmith?

A. That is my recollection.

By Mr. WALSH:

Q. How many buildings do you know, of your own knowledge, that Major Gaines constructed before the fire of 1864?

142 A. Those three log buildings on the right-hand side going down.

Q. What were they known as?

A. Gaines' cabins.

Q. Do you know of any others?

A. No, sir.

Q. Is it not a fact that the Gaines residence was originally constructed by Mrs. Sabin's mother, and that he made some improvements afterwards?

A. Some portions of that house—the old building—were very common looking, and when he went there the buildings were hardly worth looking at. He fixed them up.

Q. Do you know of any building here on the 24th of April, 1876, that he constructed for his own use and benefit?

A. None except the one he lived in.

By Mr. CURL:

Q. Do you know where Mr. Smith's restaurant is, on the right-hand side of the street?

A. Yes, sir.

Q. How far above that building was Mr. Sumpter's stable?

A. On the ground where Mr. Little's store stood?

Q. How far from the street was the stable?

A. I suppose 30 yards back. At that time they hadn't fenced up in front down to the stable. I think Mr. Sumpter had, on a portion of that ground, a good fence.

HENRY ROBINSON sworn and examined.

143 Examined by Mr. BENJAMIN:

Q. State your name, age, and residence.

A. Henry Robinson; age, 41, and reside at Hot Springs.

Q. How long have you resided at Hot Springs?

A. The best portion of my life.

Q. You have heard the testimony here in regard to the old improvements, the Sabin field, and the old fences. State whether they are correct.

A. Yes, sir.

Q. Do you know where the old mill spoken of is?

A. Yes, sir. It is filled up now. It is a little below the Hot Springs house.

Q. Do you know anything about the theatre building?

A. Major Turnbull built it.

Q. Do you know whether Major Gaines became the owner of it or not?

A. Only by hearsay. I understood that he changed it into a hotel and afterwards tore it down, and probably put some of the old lumber into the Hot Springs house.

Q. Where was it situated?

A. Just below the bridge leading to the house known as the Gaines cottage.

Q. Run down to about where?

A. Close to the Cohen house. It is above the corner of the blacksmith shop—between that lot and the creek.

Q. Do you know who has been the ostensible owner and controller of this property?

144 A. Only by hearsay. The log cabins, I suppose, Major Gaines built, because he had his hands at work on them before the war. Some of them have been torn down since the war.

By Mr. HARROLL:

Q. Do you know that Major Gaines owned any of this property described?

A. Only by hearsay.

Q. You say those log cabins have been taken down by his permission?

A. Some have been taken down since the war.

By Mr. WALSH:

Q. State of your own knowledge — any buildings erected by Major Gaines before the fire.

A. I know of those double log cabins.

Q. How many buildings were here on the 24th of April, 1876, that were erected by Major Gaines for his own use and benefit?

A. That house he lived in.

Q. Who built that?

A. He repaired it.

Q. Was it not built by Mrs. Sabin?

A. A portion of it.

Q. Do you know as to whether it is a fact that Major Gaines brought an action of ejectment against all his tenants, and then bought them out or compromised with them?

A. I don't know how he got possession.

In the Matter of the Claim of WILLIAM H. GAINES and MARIA GAINES, No. 784, Consolidated with Many Others.

145 TUESDAY, *February 12th*, 1878.

Forenoon Session.

ALBERT BELDING, being first duly sworn, testified as follows:

Questioned by M. W. BENJAMIN, in behalf of Gaines' claim:

1st Q. Look at the signature attached to this receipt and state whether you know it to be the signature of Mr. Hempstead, and whether he was acting as receiver in the land office at Washington at that time.

A. This paper I have not seen for 25 years. In December, 1851, I went to Washington, and went to the land office there and paid the receiver, B. F. Hempstead, $200 in silver for a quarter section of land embracing the Hot Springs, and he gave me a receipt for it. This is that receipt, to the best of my knowledge.

2nd Q. To whom did you deliver it?

A. To William H. Gaines.

3rd Q. Have you any claim on any of this land?

A. I am one of the heirs of Ludovicus Belding. Major Gaines represented me, with the other heirs. He named my sister.

4th Q. State whether Mrs. Gaines has been the only one of the Belding heirs that has resided continuously on this land.

A. I think so. I have no claim to this quarter section except through Gaines and wife, as the representative of the Belding heirs.

146 (NOTE.)—The above testimony is offered by the —, but the commissioners reserve all questions as to its admissibility.

JOHN H. LACROY sworn and examined.

Questioned by Mr. BENJAMIN, representing Gaines claimants:

1st Q. State your name, age, and residence.

A. John H. Lacroy; age, 40; residence, Cove Creek station, Hot Springs county.

2nd Q. Did you ever reside here?

A. Yes; I came here in 1858.

3rd Q. State whether you are acquainted with the premises then claimed by Wm. H. Gaines; and, if so, state the circumstances connected with your acquaintance with it.

A. On the west side of Valley street there was a little log house that I rented from Mr. Gaines myself and lived in it about 3 months. Right north of that he had a double log house that I rented and lived in for a year. Squire Towle is living right in front of where the little log cabin stood, and Johnson and Foreman are about where the next one was. There was another double log cabin further this way. I think Mr. Hilfridge's house is right over it. There were four log cabins. The court-house is over one of them. I built the chimneys for those houses. North of that there was a house built
by Mr. Burke. I built the chimneys for Major Gaines. All
147 north of there were renters, so far as I know.

4th Q. How far north were they paying him rent?

A. As far north as Williamson's livery stable. I heard the men that lived in those houses say they were paying him rent.

5th Q. What improvements were there on the east side of the street at that time?

A. Beginning at the south, right this side of George Belding's there was a fence and some land that had been cleared up. I made brick for Major Gaines there in 1859. There was an acre on that side or over. Right north of that there was a little frame house that Mr. Second or Legarde lived in. They told me they were paying rent to Major Gaines. It was commonly known as the Sweiptzer house. The next north of that was a hotel that Bill Davis had at that time. That is standing there right under Shipley's storehouse; Major Gaines controlled that. Then 40 or 50 feet further north there was a double log house, put up at the same fall. I put the chimneys to it. Right north of that there was a theatre building, said to have been put up by Mr. Trumbull; Major Gaines controlled that, and I worked on the building for Major Gaines. I partitioned it into rooms for a hotel. That theatre stood about where Mr. Kimbell's store is. It was a very long house and a very large house,
148 from 50 to 70 feet long, with the length up and down the
street. Up towards the Hot Springs hotel, on the east side of Hot Springs creek, commencing from the yard fence, he had a residence and yard fenced in, the same that is there now. There was a field cleared southeast of his, of ten of fifteen acres, that was enclosed and that was said to be his. That included the country south of the Gaines residence to a point about 40 steps below the grave-yard. The south line run towards the depot two or 300 yards. The fence run right along the road, going to Benton on the south. I think

Gerhart and Williamson are in that field now. There was no building inside of the field. A portion of that field was in cultivation. It had a good fence around it. East of the creek and west of the Malvern road there was a stable and a little cabin that Ed. Peters kept some horses in before the war. There was a garden down next to the Sabin lot that I got my clay from to make these bricks. That was a little southwest of the grave-yard. These enclosures, generally speaking, have been kept up by Major Gaines. He has gen- kept possession of them.

Cross-examined by Mr. CURL:

6th Q. In 1858, the time of which you speak, who occupied
149 the property between where the present St. Louis saloon is and where Sutton's store burnt out a short time ago on the west side of the street?

A. Mr. Sumpter—John T. Sumpter's father.

7th Q. Do you know whether Mr. Sumpter paid any rent to Major Gaines?

A. It was my understanding that he did, but I do not know personally.

8th Q. Do you recollect what improvements Mr. James Sumpter had along there?

A. He had a little hotel there and a stable and lot further down towards the Suttons. I believe he had a garden right back of the house and a little further below.

9th Q. How long was that hotel?

A. It would accommodate 15 or 20 boarders. It was one story. There was a little house standing back of the hotel, due west, for the servants.

10th Q. Do you know what building now occupies the place that Mr. Kempners occupied?

A. The El Paso sale stables does.

Re-examination.

Questions by Mr. BENJAMIN:

11th Q. The- Mr. Sumpter did not occupy that?

A. No, sir; it was below that he occupied.

Q. 12. Do you know whom Mr. Sumpter recognized as his landlord?

A. Major Gaines.

13th Q. Do you know who Mr. Kempner recognized?

—. ——.

150 WILLIAM CURL sworn and examined.

Questions by Mr. BENJAMIN, in behalf of Gaines' claim:

1st Q. State your name, age, and residence.

A. William Curl; age, 31; residence, Hot Springs.

2nd Q. Are you acquainted with Major Gaines and wife?

A. Yes, sir.

3d Q. Do you know the property they claim?

A. Some of it.

4th Q. How long have you known it?

A. I have been employed by Major Gaines in building. I was employed by him to build some rooms immediately north of and in connection with the Gaines residence. I have had some acquaintance with it for 12 years. I am a carpenter and builder. Mr. Gaines honored the orders that I gave for money for the erection of the buildings. I was in the employ of Major Gaines in erecting two storehouses, situated south of the Garland house, which he furnished the lumber, nails, and windows for. He furnished all the lumber and paid for the work. One of the cottage houses near the Malvern road—near the southwest corner of the cemetery, the west side of the Malvern road—I helped to build. Those cottages houses have four rooms each. I built them for him on what was known
151 as the lower Benton road, with four rooms in each. He furnished the materials and paid for the work. I was employed by him as foreman, and he paid the wages of the hands on my orders. I was in the employ of the contractors in the erection of the Hot Springs hotel; Major Gaines was the employer, and paid the orders given by the contractors, to my certain knowledge. I was in his employ to the erection of a little office immediately north of the Hot Springs hotel that was built for the use of and occupied by one Dr. Spence, and I know that the rooms were built by Wm. H. Gaines or under his consent and authority; that is north of the hotel. There was one right near Malvern crossing—I think probably the second building below Malvern crossing on the east side of the street—occupied by William States now as a saloon; that is on the west side of the creek and on the east side of the street. My boss, from whom I learned my trade, was employed to build that building. It was built by Major Gaines. He furnished the materials and paid the hands. It was built for a laundry house and was so used for awhile. There was another building put up down there that is known as the Texas house, that was known originally as Caver's store. I was foreman of the erection of that building,
152 and Major Gaines paid the hands. It was built for Mr. States, but the hands looked to Major Gaines for their pay and got it. It is a two-story house now; it was originally a one-story house. I think it is the first building south of Kimbell's store; it cannot be more than the second building south of there.

Here was introduced in evidence:

FEBRUARY 26TH, 1878.

Major Benjamin offers in evidence the proof of the pre-emption and application of Lydia Belding, widow of Ludovicus Belding, certified to by the clerk of the Court of Claims as being taken from the original papers placed in the office by the Secretary of the Interior, marked X Exhibit; also certificate of the receiver and register of the land office, Camden, Ark., of the application of Lydia Belding, marked Exhibit Y; also certificate from the General Land Office

that B. F. Hempstead and W. H. Ellis were land officers at Washington, Ark., in 1851 and 1852, marked Exhibit Z.

Conveyance from George Belding to William H. and Maria Gaines, dated October 20th, 1877; also deed of Henry Belding to William H. and Maria Gaines, dated on the 9th day of November, 1877; also tax receipt for taxes of 1874 on this property, in favor of the estate of Ludovicus Belding; also statement signed by
153 the clerk of Hot Springs county, showing by whom the taxes had been previously paid; all of which papers are herewith.

GEORGE BELDING sworn and examined.

Questions by Mr. BENJAMIN, representing Gaines' claim:

1st Q. State your name, age, and residence.

A. George Belding; 45 years; Hot Springs.

2 Q. How long have you lived here?

A. Since the spring of 1852, except three years during the war.

3 Q. State if you know anything about the possession of the Belding heirs, or of Major Gaines for them, and how they came into possession.

A. We came into possession of the most of it by the action of the courts, writs of possession, &c. The part that came from Mrs. Sabin was bought from her by the Major; that house occupied the ground where the St. Louis saloon is now; that house he bought of Mrs. Sabin at the same time he bought the property where his residence is, &c.

4 Q. Commence now at the south end of the tract and state what improvements were there in 1860, and who controlled them.

A. Before 1860 there had been some old cabins that may
154 have been destroyed before that time. Above the line there was a little house owned by Runyon. There was a man lived in it by the name of Weaver, in 1859 or 1860. That was just south of the Kempner house, between there and the south line of the Hot Springs quarter. He was a tenant of Runyon's, who owned the house then. The next house to that was the Kempner house, which stands there now, and is occupied by a man by the name of Oxford. Next to that was a house that presented one corner a little more to the road than the other, which was purchased by my mother from a man by the name of Williamson. That old house partly fell down, and was torn away. That was this side of the Kempner house and almost joining it. It would be about McCaffrey's, or probably a little below that. The next house was a little old log cabin that old Mrs. Julian lived in, and that was known as the Julian cabin. I knew that house as long ago as 1855 or 1856. Major Gaines got possession of that Julian cabin and built another cabin to it about the time he built the other row of cabins. He built another cabin to it, leaving a little space between, and put a chimney right in there between the two houses. About 25 feet still further north of that he built two more cabins, with a chim-
155 ney between them. He had a row of four double cabins there with shed rooms attached, and there were four rooms, I think,

to all of them. That row of cabins would extend probably 250 feet, about, above where Horton's now stands. Next above those cabins were the Burke possessions. A man by the name of George Asher sold goods there at one time, a Jew. There was quite a row of houses there. I think four or five rooms. It was quite a long row of cabins. There was a man by the name of William Hutt sold goods there afterwards. Burke and Gardner bought Hutt out, and sold goods there for a couple of years or so, and then old man Gardner's son blowed the thing up with powder and matches. That was the last that I ever knew of that house. From the big, hollow, old red oak tree that stood about the corner here (reference to plat) there was an open place that Sumpters afterwards fenced up. There was an old well that used to be there which is now in the street and filled it. It stood directly in front of Sumpter's grocery. They had a large room that did not come out flush with the street; probably 20 feet square. The fence ran diagonally back to Sumpter's house lot. Then Sumpter's building came up north. They had
156 a long row of buildings. Their dining-rooms was a long room this side of the grocery house. I do not know how many rooms they had there, but probably about five rooms. They extended up to where Kempner sold goods. They had a garden enclosed back of that. It was of the length of that row of buildings and extended probably further. Mr. Kempner had a long store-room and probably two other rooms south of that that he used as a warehouse, that joined onto the Sumpter building. Then above that—north of that—was the storehouse that I occupied. That was about 24 feet long, and presented the side to the street, as all the houses did at that time. The St. Louis saloon now occupies the same grounds. The livery stable stands right on the ground where Kempner was, or at least a portion of it. I am not sure but the old house would run a little south of that. Still north of my storehouse there was a yard with a little dwelling-house standing back from the road that Mrs. Butler used as a residence and afterwards sold to Mills. Right north of that on the street was a little storehouse that presented the end to the road, that Mills occupied. Right north of that again was a little row of one-story buildings occupied by Barksdale and at one time
157 by Flowers. Right in front of the Wilson livery stables (the street was very narrow till after the war) was a little house that was used as a bar-room by Barksdale and other parties. Before Barksdale had it it was used by a man by the name of Benson. It was part of the Barksdale possessions. These are all the buildings that I know of on that side of the street. On the other side of the street, about where the Hot Springs hotel is, an old Dutchman named Sweiptzer had a grocery house. Below Sweiptzer's there was a little cabin that was used sometimes by a man by the name of Dugan, on the corner very nearly where Dr. Taylor's office is now. The theatre building was a little below the bake shop. It was built by Trunball, who failed in the business and sold the house to me and Major Gaines. It cost about $1,700. Below that were 2 or 3 log cabins that Major Gaines built, and below that was a blacksmith

shop, and below that some old houses that I have known ever since I have been at Hot Springs. They were occupied by a man by the name of Hooper. They were just above the Malvern crossing. I speak of the crossing as it was then, probably a little this side of Brighty's saloon, right above the crossing of the creek. Right diagonally across the Malvern road was an old frame house that presented the end up north. There was a little gallery next Valley
158 street, and there was another room and a little hall between. That was occupied by old man Parker some time, and the post office was in it. There was a fence around it. The well was right in front of old Ony Macklin's door, who kept and sold cakes there. She had a little yard fence- in. Below that was Mr. Sweiptzer's residence. He lived there and sold whiskey in the shop I described before. That was enclosed. Before the war there was an enclosure where Leeroy made bricks for Major Gaines. Below that there was an old shanty that McDaniel lived in and that burnt up. After that it was enclosed and a brick-kiln was put up there. Since that Major Gaines fenced that in with a good fence. I had a fence 7 or 8 feet high around my garden. My possessions extended over onto the Hot Springs quarter, and his enclosure joined onto mine. I think it was enclosed all around since the war. I do not recollect whether it was before the war or not.

5 Q. State whether before the war the ground on the west side of the creek was all enclosed.

A. I cannot recollect There was a fence on the back side of this line of improvements built by the Sumpters, but I do not recollect about any front fence below the Burke possessions. Above
159 there was no fence, because there were buildings there, except Mr. Sumpter had built a fence from the Burke house to his. At one time they had a rail fence that ran down below this big room that I told you about, where there was a crazy man stayed, and he broke loose one day and ran with a chain fast to him and hid in one of the fence corners there, and that made me remember that the fence stood back from the road. I think after that Mr. Sumpter straightened out that fence even with the road. Their stable and horse lot sat back very nearly where the Sumpter house is now, and there was a passage-way left there to get up into the Masonic lodge-room that was up on the hill there, not far from Mr. Little's. The Sabin field there, I do not know just how it was shaped. It was quite a large field at the time Major Gaines got it. There was more than one-half of it that he cut off for her. He ran his fence right on the south line of the Hot Springs quarter from the Malvern road to the back side of her field, wherever that was, and then it extended up to the Benton road. There were two Benton roads used then, but mostly it was *but mostly* the right-hand one going from here
160 towards Benton that ran right up to the hill there. Major Gaines' fence ran right up to that. There was another road that ran where the Benton road now does. I lived there with Major Gaines, and I know that afterwards he extended that fence across that road and turned the entire travel around that crooked corner that was up there.

6 Q. State whether Major Gaines is the only one of the Belding heirs that has resided on this property continuously.

A. Yes.

7 Q. And whether with Major Gaines she has not exercised control of it.

A. With the exception of the little strip that I had down there. They are the only ones that have lived on this quarter except myself. I was the first person who took possession for him of these houses when he bought them from Mr. Sabin.

8 Q. Who has had the control and management of it?

A. Major Gaines, all the while.

9 Q. Do you know whether Mr. Sumpter leased to Major Gaines and paid him rent?

A. I do not, but I have heard that he did. I know Kempner leased a storehouse from Major Gaines and paid him $12.50 a month rent. I never saw the lease.

Cross-examined by JOHN M. HARRELL:

10th Q. Are you one of the Belding heirs?

161 A. Yes.

11 Q. Have you any interest in the prosecution of this claim by Major Gaines?

A. Not that I am aware of. I made him a deed on the 20th October, 1877.

12 Q. What was the consideration?

A. I do not know what it would amount to. I am indebted to Major Gaines or have been, and I do not know how liberal he would be if he gets this thing through.

13 Q. Will you measure his future *liability* by the past?

A. Sometimes he has been pretty liberal, and sometimes he got a little stubborn and was just the reverse.

14 Q. Do you say he has been in possession of all this property 25 years?

A. No, sir; I said the balance, except the Sabin property, he got through the courts, and I do not recollect just when the actions took place. I suppose it was about 1856, probably.

15 Q. Have you, as one of the Belding heirs, shared the income derived from the rents and profits of that property?

A. No, sir. The Major was at all the expense of conducting the suit, and he had a right to the rents.

16 Q. He never accounted to the heirs?

A. He never did to me.

17 Q. Who are the other Belding heirs?

A. His wife, Albert, and Henry M.

162 18 Q. How did he present his claim in the court?

A. In the name of the Belding heirs.

19 Q. Did he pay taxes on this property?

A. Yes; for the Belding heirs. I have seen it on the tax book taxed to the Belding heirs.

20 Q. When did he make the Sabin purchase?

A. In the spring of 1852.

21 Q. Has he been upon the land ever since?

A. I do not know that he has been on it personally. He has travelled considerably. Most of the time he had been residing there. I do not think his family have resided in Chicot county since that time only on a visit. About 1876, at one time, his niece, Mrs. White, ran that house as a boarding-house, and she and his family lived on the farm. There has been some of the family always there. They always claimed it as a home.

22 Q. Did not Major Gaines and his family reside on his place near Sulphur Springs while Mrs. White kept that boarding-house?

A. I think likely he did.

23 Q. Did they not live in Chicot county sometimes?

A. I do not think he did. I do not think he has owned that plantation for 8 or 9 years. I do not know just when he got out of the possession of it, but I guess it was when he went into bankruptcy and his creditors seized it.

163 24 Q. Did they seize his property on the reservation here?

A. I do not think they did.

25 Q. That was the property of the Belding heirs?

A. He built houses here.

26 Q. Did he claim them in his own name or that of the Belding heirs?

A. I never inquired into that. I think he paid taxes on the whole thing. He did not build them for me, and never proposed to give me anything out of them.

27 Q. Did not he live in Texas awhile?

A. I think not. He went there during the war to have his eyes operated on. His family was here most of the time, and I guess all the time. He was in Texas only a short time.

28 Q. You say he obtained possession of this property by the action of the courts?

A. The most of it, not the most in bulk, but that he obtained the possession for the Belding heirs from most of the parties who had possession of it.

29 Q. Do you know where Mr. Nichols' blacksmith shop was?

A. Down there where Booth has a butcher shop, just below Shipley's store. The candy shop is in a part of it.

30 Q. Who is in possession of that?

A. I think Mr. Nichols is.

31 Q. Did Major Gaines attempt to get possession of it?

164 A. He has a lawsuit pending.

32 Q. Did you know a man by the name of Boatwright?

A. Yes; he was about the shop there with John Salmons some time.

33 Q. Do you not know that he bought Salmons out?

A. No, sir.

34 Q. You stated that Major Gaines got possession of these peices of land by the action of court. How do you know that?

A. By his taking possession at the hands of a public officer.

35 Q. Do you know whether Boatwright got possession of this property in the forks of the road?

A. I have been told so.

36 Q. How did you buy the Turnbull theatre?

A. Turnbull was several hundred dollars in my debt and I had to take the building in order to get my money. The Major and I bought together, and afterwards I sold my half to the Major and he paid me costs for it, more or less. I think the entire cost of the building was $1,700. Major Gaines cut it up into rooms, and I understood it was to be used for a boarding-house.

37 Q. Do you know whether he claimed this property in his own name or that of the Belding heirs?

165 A. In his own name, I suppose. It was personal property, and he bought of me. I did not consider that we had any title to the land. I expected at the time that he would get a title.

38 Q. Whatever became of all those old buildings that you have described?

A. I suppose they all got burnt up except some that are standing. The old grocery house that I sold goods in was moved down to the Sentinel office and is in the rear of a part of the house, and the old Butler residence is in the rear of a part of that Job Ward building, very close to the St. Louis saloon, on the north side. I do not believe there are any more standing on the west side till you get to the Kimball house. That is standing. On the other side the old Sweiptzer house is standing in the rear of a part of the Allen house now. There are some cabins there that the Major had, south of the theatre building, which was occupied since the war by a man by the name of Vose as a bakery and afterwards by Bush. That is all I know of unless there are some old log cabins across the creek there that a man by the name of Puckett had. On the east side of the creek there is not a vestige of a house on the Sabin place that was there when I first came here. The log kitchen that is

166 there was built afterwards. His dwelling was built entirely new. The old house was torn away.

39 Q. How far east did the south fence go?

A. It went past the colored church and to the turn of the hill, but not down the hill to the other side.

40 Q. Did the fence on the east side of that lot run south to Gerhart's house, where he lives now?

A. I think it did. It turned and went right up the hill.

41 Q. There was no Gaines avenue there then?

A. No; there were two Benton roads, and the main travel ran along by Major Gaines' fence.

42 Q. Had Major Gaines a power of attorney from the Belding heirs?

A. I think he had.

43 Q. Do you know the terms of it?

A. No, sir; I was a minor then and did not execute it.

44 Q. Was there a power of attorney executed here lately?

A. Yes; three or four years ago. I signed it.

Cross-examined by B. F. RICE, counsel for J. D. Chidester:

45 Q. You say Kempner occupied the grounds covered by the El Paso stable?

A. Yes; there was a row of cabins that extended along the road, and he occupied these. I do not think he occupied the
167 back part of the ground.

46 Q. When was it those cabins were there?

A. I do not recollect when they were built, but I sold goods there in the fall of 1853 and up to the time of the war. They were said to have been burnt down during the war.

47 Q. What building was erected next on that ground where the stable now is?

A. I do not know of any but the stable. It was the next erected.

Questions by B. F. RICE, as attorney for Hot Springs R. R.

48 Q. Was the Sabin property that Major Gaines bought, the most of it, south of Gaines avenue?

A. I do not think it was.

49 Q. Was the field south of the Gaines avenue enclosed by itself separately?

A. Yes; and it took in the cemetery. He ran the division fence between him and Mrs. Sabin that ran by the road, and he had a garden patch on one side of the fence and she had one on the other side.

50 Q. Where were the Sabin houses?

A. Right where his residence is now. They were in an enclosure by themselves, not in the same enclosure with the field. There was a road between run-ing down to the Malvern road. He had
168 a garden and horse lot and stable on the hill close to where the Episcopal church is. East of where his residence is he had a horse lot. There was a cross-fence between it and the house. There were several enclosures running east of the house. They were not in the same enclosure with the field; there was a road between.

Questions by JOHN M. HARRELL:

51 Q. Did you execute that deed on the date written in it?

A. Yes.

52 Q. You and your wife executed it on the 10th October, 1877?

A. Yes; that is her handwriting.

Questions by A. CUREL, for Abraham Kempner:

53 Q. You said something about a cottage house occupied by Mr. Kempner near the south line of this claim, on the west side of the street.

A. Yes.

54 Q. Who built that house there?

A. I do not know who built the first building that was put there. I know Kempner had a log house built in the rear of the other for a kitchen.

55 Q. Was it as long ago as 1852 or 1853?

A. No, sir.

56 Q. What other improvements were there when you first knew the premises?

169 A. I never noticed anything but a little row of frame houses and probably an enclosure. There was a well at this end of the house.

57 Q. How long did Kempner live there?

A. Up to 1861 or 1862, after the breaking out of the war.

58 Q. Are the same buildings that were there when you first knew the place there now?

A. Yes; the same houses, and probably a log house back of it.

By A. CURL, as counsel for J. J. Sumpter:

59 Q. What became of the house known as the Malole house, that stood where the St Louis saloon is?

A. I sold goods in it till the fall of 1861. It was said to have been burnt down during the war. I removed to Saline county in the fall of 1861. I came here on the 3rd of March, 1863, and remained until the fall of 1863, and then went to Texas, and came back on the 10 of December, 1865. I had the house built that is there now myself in 1867.

60 Q. Do you know who built the storehouse occupied by Kempner, north of Sumpter's hotel?

A. No, sir; the first I ever knew of them there was a little log grocery somewhere about there. When I moved here in 1852 they were there and Kempner was doing business there then.

170 61 Q. Do you know when Mr. Sumpter first came into possession of the hotel property?

A. No; I recollect of seeing the old man Sumpter when he came here. I recollect of his family being here in 1847. I left his family in possession of that house when I went to Texas. James Sumpter himself was dead then; he died in the summer of 1861.

62 Q. You speak of hearing some of them say something about a contract between Gaines and Sumpter. What was your understanding of that contract?

A. My understanding was that Mr. Sumpter paid Major Gaines a consideration for the rent of the house, simply sufficient to show that he acknowledged him as his landlord. I believe it was a dollar a month.

63 Q. Did you understand that in the event that the Belding heirs failed to secure a patent under their certificate of entry Mr. Sumpter was to remain there as a squatter?

A. No, sir; I never had any understanding of the kind.

64 Q. Do you recollect the fence that ran along the north side of the Sumpter possessions before the war?

A. Yes; there was a picket fence there that ran west some distance. There was a considerable enclosure back there; they had a vegetable garden in it.

65 Q. Was there a vegetable garden in the rear of where the stage stable now stands?

171 A. Yes; it ran all along there.

66 Q. Does not the stable occupy a part of the ground occupied by that garden?

A. I think it would; it reaches back a considerable distance.

67 Q. Is the street wider now than it was then?

A. Considerably.

68 Q. What building now stands where the north room belonging to Mrs. Burke originally stood, on the west side of the street?

A. I think it was along where the Little and Jenkins building was.

69 Q. You said something about a passage-way going back to where the Masonic lodge met.

A. Yes.

70 Q. Going back there, did not parties pass through this large gate you speak of?

A. I think Mr. Sumpter fenced that off. I think there was a big gate there.

Questions by MURPHY and WARD, in behalf of Benj. W. Goode, Adams, Sumpter, Vaughan, and other claimants:

71 Q. Who built the house that you have spoken of as being on the land in 1860?

A. I do not know that I can state as to all. The log cabin that I spoke of, on both sides of the street, Major Gaines built.

72 Q. Did the Belding heirs build any of them?

A. No, sir.

73 Q. How many of them did Major Gaines build?

172 A. There were three double cabins he built, and he built one cabin up to another one that was there.

74 Q. Did he build one-half of the houses that were there in 1860?

A. Less than one-half of them.

75 Q. When did he get possession of those houses under the order of court?

A. About 1856.

76 Q. The houses were built at that time and parties living in them?

A. Yes; in some of them.

77 Q. How many of those houses did he or the Belding heirs or all of them together buy?

A. I do not know of any being bought except what was bought from Mrs. Sabin.

Questions by JOHN M. HARRELL:

78 Q. Have you the written agreement referred to in this deed?

A. Yes; at home.

Questions by W. P. WALSH, appearing for 31 claimants:

79 Q. You are a brother-in-law of Major Gaines?

A. Yes, sir.

80 Q. State how much property was on the Hot Springs reserva-

tion after the fire of 1864 constructed by and for the use and benefit of Major Gaines, on the land claimed by him in his petition here, or since the war, and that he was in possession of on the 24th of April, 1876.

A. There was a row of cottages in his yard that has been
173 built since the war; then I think there was an extension up the mountain. There was the Hot Springs hotel.

81 Q. Do you know that he built that?

A. Yes; I furnished him part of the lumber that went into it.

82 Q. Who furnished the money?

A. Major Gaines.

83 Q. What did he pay for the Sabin property?

A. I understood he paid $700.

84 Q. Do you not know it was the understanding that he was to deed that property to the Sabins; that it was merely a mortgage?

A. No, sir; I do not.

85 Q. How much of this property do you get if Major Gaines succeeds?

A. I do not know how liberal he may be. I will get a small part of it. I do not know — much. I am an interested party, sir.

86 Q. Is it not a fact that Major Gaines leased this property from Sabin before he purchased it? Do you not know that?

A. No, sir; I do not know of anything of that kind. He occupied it after he bought it. I never heard of his leasing it.

CHARLES BROWN sworn and examined.

Questions by HAMILTON BENJAMIN, in behalf of Gaines *et al.*:

1s- Q. State your name, age, and residence.

A. Charles Brown; age, 59; residence, Hot Springs county.

2 Q. When did you come to Hot Springs?

174 A. In May, 1851, I came here from Chicot county. Major Gaines raised me from a ten-year-old boy. I lived with him till 1861.

3 Q. Describe this Sabin field and its fences.

A. When they measured off the land that he bought from Mrs. Sabin, Henry Belding laid the worm for the fence between, and my boy and Billy Gaines built the fence. You commence at the corner of Runyon's fence, across the creek on this side. We commenced on the west side of the creek and crossed over and went east. Jordan Flowers is living on the line now. It ran east till it got beyond Jordan Flower's, and then it turned off and ran north and south and came on Hot Springs mountain this way.

4 Q. Taking this one field, did it go to the Benton road?

A. Yes; on the south side of the Benton road he had a garden, and on the south side to the turn of the road, the curve of the road, he had three different patches—a corn patch, an oats patch, and a potato patch.

5 Q. Did it run north to the Benton road?

A. It ran north to the mountain and did not fence up the road

This field ran north to the Benton road and then came along in front of his house. It came up the Benton road to the valley and then right down to the curve of the road and took that in.

175 On the north side of the Benton road we had a calf lot running back east about 150 yards.

6 Q. On the west side of Valley street, Major Gaines' possessions, was there a fence enclosing that before the war—the whole thing?

A. Yes; there was on the right-hand side of the street. He had us fence it up because the parties complained that they could not keep the cattle and stock out of their houses.

7 Q. Do you know anything about the house Mrs. Sabin had on the east side of the creek and west of the street, above the crossing at one time near where the old theatre was?

A. I do not remember whether she owned that or not. Gates and Montgomery occupied it.

8 Q. State whether below the crossing it was fenced up before the war—on the west side of the creek and the east side of the street.

A. Not to my recollection. There was a passway between the creek and the Major's house, lot, and garden on the east side of the creek. On the west side it was open. The brick yard was fenced up on the south side of the road.

9 Q. State if you know of Mrs. Gaines in 1865 fencing up the lot opposite the Hot Springs hotel.

A. Yes; she had Wesley Matthews to lay the worm in April, 1865, and we picked rails from across the creek and put up the fence.

176 10 Q. How much was fenced up?

A. I cannot say how much, but there was a pretty good scope that is now idle; mighty near every bit of that ground that is in front—that is in front of the Sumpter house.

11 Q. How long was that fence there?

A. It was there in 1866; some of it—part of the south line.

Questions by JOHN M. HARRELL:

12 Q. Did you belong to Major Gaines before the war?

A. Yes, sir; I had been out of his employment ever since January, 1866. I live on the Malvern road, about a mile from his farm.

13 Q. How far was that horse-lot fence from the house?

A. There was a big road between the calf lot and the horse-lot gate and the house.

14 Q. His east fence was how far from the house?

A. About 150 yards.

Questions by Mr. WALSH:

15 Q. What use did they make of this ground after they fenced it?

A. He kept calves in there and raised potatoes. I did not work for him, though, in 1865. That was before the war. Mrs. Gaines put it there in 1865 for a garden, but she did not put it to any use.

Questions by A. CURL, as attorney for John T. Sumpter:

177 16th Q. What sort of a fence was it she had put around the Sumpter lot in 1865?

A. A rail fence 8 or 9 rails high.

17 Q. Did you see it put there?

A. I saw it afterwards. It was burnt down, and I went along where it had been and picked up the rails.

18 Q. How do you know Mrs. Gaines built it?

A. There was nobody else to build it, and she told me she built it. There was nobody here but a few old women and Dr. Colten (or Golden) and Mr. Davis.

19 Q. When did the balance of that fence leave there?

A. I do not know.

By Commissioner COBURN:

20 Q. Who cultivated that garden?

A. No person at all. It was used in old man Sumpter's lifetime as a garden and horse lot. The parties came in afterwards that are on it now, and they did not fence it. They came in in the fall of 1865. There was no house there. They lived at Willoughby's place, and they came there to build.

11 Q. Who did?

A. Mr. Sumpter.

12 Q. Did they take possession of that lot in 1865?

A. Yes, sir.

13 Q. Was the fence standing when Mr. Sumpter returned and took possession?

A. Part of it was on the south.

178 15 Q. You are certain that Mrs. Gaines did not use it after it was fenced up?

A. She did not plant a seed in there. My boy owns that. He put that fence there; him and Billy Gaines.

JOE CRITCHER sworn and examined.

Questions by Mr. BENJAMIN, for Wm. H. and Maria Gaines:

1 Q. State your name, age, and residence.

A. Joe Critcher; age, 25; Hot Springs.

2 Q. State whether you were employed by Mrs. Gaines in 1865 to fence up the property opposite the Hot Springs hotel called the Sumpter property.

A. Yes, sir.

3 Q. State whether you made the fence.

A. I hauled the rails and Mr. Matthews put the fence up with the help of the old man's son and myself.

4 Q. Did you make a good fence?

A. Yes.

5 Q. What ground did you fence up?

A. About an acre and a half.

6 Q. Where was the south line of the fence?

A. Right in front of Major Gaines' old building, back of the Hot Springs house.

7 Q. Was there a rail fence?

A. Some rail and some plank.

Questions by Mr. CURL:

8 Q. How far back did that enclosure extend?

A. Far enough to make an acre and a half square. It was
179 either that or more. It was a good, big garden.

9 Q. What time of year was that built?

A. It was in the early winter.

10 Q. How old were you then?

A. About 18 or 20.

11 Q. Was that while the war was going on?

A. The fence was there when Mr. Sumpter got home from Texas, and when he got back he took possession. It was built before anybody got back from Texas.

12 Q. Who told you the fence was there when Mr. Sumpter returned?

A. I know it was there. He had to tear some of it down before he could get it fixed like he wanted it. I saw the fence pulled down.

13 Q. Who told you it was in 1865 that fence was built?

A. As a matter of course I knew about the time the fence was built.

14 Q. What year of our Lord is this?

A. This is 1868—no; 1878, I mean.

15 Q. How were the planks put up on that fence?

A. Some of them were nailed to a kind of posts set in the ground.

16 Q. How did Mrs. Gaines use that lot after it was fenced?

A. She did not use it, because her stock died before she got to use it. They did not raise anything in there.

180 ELIJAH HARRIS sworn and examined.

Questions by Mr. BENJAMIN, for Wm. H. and Maria Gaines:

1 Q. State your name, age, and residence.

A. Elijah Harris; age, 48; Hot Springs.

2 Q. State whether in 1874 you were employed to build some fence for Major Gaines.

A. Yes; I built some fence running very close to the old stable, on the Benton road, and running from there half a mile, to where old man Jimmy lives, close to the depot. We came up from the mountain to the Hot Spring house and closed it, and just the same way on the other side. We enclosed the Baptist church. I guess we enclosed about 50 or 60 acres; it may have been over. We enclosed it with a good, substantial fence of posts and planks. He hired a fellow to keep the fence up for near two months; when he quit keeping the fence up people tore the planks off. I suppose there is some of it there yet. It stood along the road there as an enclosure for a year or better.

Cross-examined by JOHN M. HARRELL, for James O. Ducker:

3 Q. What time in 1874 was it you ran than fence?

A. The last days of December and first of January.

181 4 Q. When you were building that fence back of Jimmy's, on the side of the hill, did you not fence between some buildings started on the left and north to the Benton road, between Ducker's office and the Benton road?

A. Yes; but there was no fence then. He had started to clear and had some lumber there, and we went and fenced right up on the mountain, and of course he was inside, and we fenced him in.

5 Q. Was he arrested and imprisoned?

A. I do not know what they did with him. I never saw him any place, only in the court-house, where he was the next week at the trial.

6 Q. What became of the lumber he hauled there?

A. I cannot say. The hands that worked with me never touched it.

7 Q. When you commenced work there did not he have his posts in the ground?

A. No, sir.

8 Q. Do you know whether he pulled down that fence in order to get his wagons through when they came with lumber?

A. I know that he had it torn down and the planks knocked off and drove through.

Questions by W. P. WALSH:

9 Q. Do you recollect when you were building this fence for Major Gaines in 1874, when you constructed it along the line where Towle and those colored people lived, it was not Sunday?

A. No, sir; it was not.

182 10 Q. Did you not work on Sunday?

A. That fence was built along there in the week.

11 Q. Did you not run the fence right through Becker, Goodman, Houseman, and Towle's yards?

A. No, sir; their houses were left outside. There was no building left on that side of the fence.

12 Q. Did you leave their well on the other side of the fence?

A. If there was any well there it was not finished; it must have been just a well started.

13 Q. Did not you and Mr. Ducker race in building that fence to see who could get through first?

A. No, sir.

14 Q. His fence was inside of yours six feet?

A. I do not know the distance. He had no fence there when we built ours.

15 Q. Did he have any fence there at all?

A. No, sir; he was just fixing to build a fence. He was getting his poles, and his hands were starting to dig the holes. They had their picks and spades there. They began to dig holes for the posts and we got by there and they stopped.

16 Q. How many holes did they dig?

A. I do not know. The place that they started to enclose in was not more than twice as big as this house.

And further the witness saith not.

183 FEBRUARY 12TH, 1878.

In the Claim of WM. H. and MARIA GAINES, No. 784—Continued.

NATHAN H. CLOYES sworn and examined.

Examined by Mr. BENJAMIN:

Q. State your name, age, and residence.

A. Nathan H. Cloyes; age, 50, and reside here.

Q. Look at that paper and see if it was given by you.

A. Yes, sir; Mr. Curl wrote it and I signed it. I sold the improvements stated there.

Q. It says all improvements, including the residence. Where is that?

A. Where the street starts out below the grave-yard, on the west side of the Malvern road. All the improvements stated are upon the ground. I made 2,000 brick there; had it all enclosed.

Q. Do you—who built the fence that enclosed that lot right north of the church or adjoining the Methodist church?

A. I put the lumber there and had it built for Major Gaines.

Q. Before or since the decree?

A. Before; right after I built the church.

Q. Do you know anything about the fences that Major Gaines had around the Sabin field and whether they were kept up until after the decree?

A. Yes, sir; parties kept pulling it down all the time.

Q. Did they keep repairing it?

184 A. Yes, sir; for two years. I hauled plank several times for Major Gaines to put it up. I cultivated it for two or three years myself.

Q. You were here in 1865?

A. Yes, sir.

Q. State whether you know anything about a fence built on what is commonly known as the Sumpter possession.

A. There was a fence built there. It was understood that she fenced it. The stable was not there then.

Q. Who occupies it now?

A. It is right in front of the Sumpter house.

Q. All that property in front of the Sumpter house?

A. Yes, sir; where Hobson's office is, and runs back to the Sumpter house.

Q. Do you know what became of that fence?

A. A portion of it was torn down. It was broken down there when they were building the stable. They kept the fence up there as well as they could. It was a general camping place. In 1870 a new fence was put up there entirely.

Q. Who put that there?

A. Billy Sumpter was bossing it; had some hands to do it.

Q. And they were armed with shotguns?

A. Yes, sir; the parties working there were armed. They built the fence clear down to Sammons' property, right where the Methodist church stands.

185 Q. On the front or back?

A. All on the front. They went down the front until they came to what is called the Smokey road and went up the hill there. Dr. Hobson afterwards built a dwelling-house right upon the edge of the fence.

Cross-examination by Mr. HARRELL:

Q. When speaking of the fence, which you say you repaired and cultivated the ground within it, to which did you refer?

A. I refer to the old field fences. It did enclose some wood lands. It did not go on the mountain there.

By Mr. WALSH:

Q. You spoke of a stable in your testimony. To what do you refer?

A. Chidester stable.

Q. Do you state as a fact that this fence referred to in your testimony was torn down to construct that stable?

A. I didn't pull it down.

Q. Do you know whether there was a fence there when that stable was constructed, to your own knowledge?

A. I don't know as there was a fence there right at the time of the building of the stable, but just before the building.

Q. How long before?

A. Three months.

Q. You spoke of a fence being built there in 1865. What time?

186 A. During the spring of 1865.

Q. What sort of a fence?

A. Plank fence.

Q. Any part of it rail?

A. Some along in front.

Q. How far back west from the street was the enclosure from the present street?

A. It rather come out in the street.

Q. Then how far east from the mountain?

A. I could not tell you; there was a fence behind Belding's store, and that fence went back to the old Sumpter garden and the quarter-section line.

Q. Was Belding's store standing there then?

A. Yes, sir.

Q. You said something about Dr. Hobson building a residence.

A. Yes, sir.

Q. Whereabouts?

A. Built immediately west of the South End drug store; maybe a little north.

Q. Do you know who lives there now?

A. No, sir; I do not.

Q. Was it within the Sumpter enclosure?

A. Yes, sir; inside of it.

Q. When was it built?

A. I do not recollect exactly the day; I know I delivered some lumber there and some brick.

Q. Is it not a fact that Sumpter built a house there in 1871 and rented it to Dr. Hobson, and he put an addition there?

187 A. I don't know but what there was a little building there called Dr. Hobson's; he was the only one occupying it as a residence that I know of.

Q. Do you know whether Belding had a storehouse there in 1865 or not, at the time you say this fence was built?

A. There was an old storehouse there.

Q. Do you know how long the fence remained there that Mrs. Gaines built?

A. No, sir; it was put up and torn down frequently.

Q. Did you live here regularly in 1865?

A. No, sir; I lived here six months in 1864.

Q. You said something of men being armed. Where was Sumpter? Where was the gun?

A. Sitting up against the fence.

Q. Do you know what he was doing with it?

A. No more than that he had men with him.

By Com. COBURN:

Q. How many did you see with arms?

A. But one.

Q. Who had that?

A. William Sumpter.

Q. Was that gun used in the frightening of any one?

A. He did not make any threats at all; he set the gun down by the posts and told them to go ahead and put up the fence.

Q. Some one was with him?

A. The men were already there; he had three or four hands to work on the fence; they commenced in the night and it was finished that morning.

188 Q. Any altercation at all between him and any one?

A. No, sir.

Q. Any opposition to the building of it?

A. No, sir; I did not see any opposition at that time.

Q. Mr. Sumpter set the gun down before the hands went to work?

A. Some of them were working; nobody interfered with him.

Q. How long did he stay there with the gun?

A. He seemed to be protecting the hands. He was not there more than two hours and a half getting the fence completed. He was there all the time. The last time I saw him he was going below, down towards the Methodist church, putting up the fence.

Q. You said the fence was commenced at night. How do yuo know that?

A. I was in town, at Ellsworth, the evening before, and the new posts were not set then, but the next morning they were there and nailing the fence to them.

Q. Did you see anybody at work on it that night?

A. No, sir.

By Mr. RICE:

Q. Where did that fence commence on the north?

A. Adjoining Chidester's stable.

Q. Southwest corner of the stable?

A. Yes, sir.

189 Q. It did not enclose it?

A. No, sir.

By Mr. WALSH:

Q. You acted as agent of Major Gaines for several years?

A. Yes, sir; nearly two years; use to rent some houses and collect the rents.

Q. What was Major Gaines' revenue a year—how many thousand dollars?

A. I do not know.

Q. How much did you collect as agent for a year?

A. I could not tell.

Q. Ten thousand a year?

A. I don't think it was.

SAMUEL H. STITT sworn and examined.

Examined by Mr. BENJAMIN:

Q. State your name, age, and residence.

A. Samuel H. Stitt; age, 34, and reside at Hot Springs.

Q. Are you acquainted with William H. and Maria Gaines?

A. Yes, sir.

Q. State when you came to Hot Springs to reside.

A. In 1870.

Q. What business did you follow at that time?

A. Hotel-keeping. I opened the Hot Springs hotel.

Q. State whether you know anything about Sumpter and others fencing in the ground in front of that hotel in 1870 and how they done it.

190 A. I remember that a fence was put along in front or a little below the Hot Springs hotel.

Q. Who was engaged in it?

A. I remember that there was considerable talk at the manner the fence was put up; some excitement there, and parties were standing around armed.

Q. What were they armed with?

A. Shotguns.

Q. Who had them, according to your best recollection?

A. As far as I can remember, they were Mr. Sumpter, his brother, Mr. Daniels, William and George Sumpter. I don't know that they were all armed, but I remember there were two or three shotguns on the ground, and considerable comment was made of it by the visitors of the hotel, who had collected on the porch. Major Gaines started to go over, and I rather think his family tried to prevent his going; but he went over, and there was some little apprehension about his safety.

Q. Did they remain armed until the workmen built the fence?

A. As far as I can remember, they did.

Q. Was there any fence there previous to that time, in 1870?

A. I can remember part of an old fence down at the southeast corner of that lot.

Q. But no enclosure?

191 A. A remnant of a fence there—a skeleton of a fence.

Cross-examination by Mr. HARRELL:

Q. Who built the Hot Springs hotel?

A. Mrs. Gaines and Mr. Gaines. I furnished the house and run it on a partnership.

Q. What did it cost?

A. I do not remember exactly. When we opened it the hotel was not completed; considerable repairs were put on afterwards; it was plastered afterwards and an addition put on.

Q. Do you know whether there was any money borrowed from a lawyer in Memphis to build it?

A. I don't think there was.

By Mr. RICE, as attorney for Hobson:

Q. Was not that vacant ground from Chidester's stable down to where the stores are at present?

A. As far as I can recollect, it was open along there.

Q. Including Hobson's office, was not that all vacant in 1870?

A. As far as I can recollect, it was.

Q. Enclosed in any other way except the one just described?

A. I don't know as it was.

By Mr. CURL:

Q. Do you remember who the parties were that had arms?

A. I cannot remember exactly who they were.

192 Q. Were there many of them?

A. No.

Q. Was anybody opposing the construction of the fence?

A. Not that I know of.

Q. Do you know when that fence was built?

A. I do not remember the time of day; it seems to me when I saw this scene it was in the morning.

Q. Were you here in 1874?

A. Not all of the year.

Q. Do you know anything of Mr. Sumpter's building a fence there in 1874?

A. No, sir; I was in Washington in 1874.
Q. What is the relation existing between you and Major Gaines?
A. Friendly.
Q. Are you not the son-in-law of Mr. Gaines?
A. I am.

HIRAM IRWIN sworn and examined.

Examined by Mr. BENJAMIN:

Q. State your name, age, and residence.
A. Hiram Irwin; age, 63, and reside at Hot Springs.
Q. Do you know whether there was a fence in 1865 built on the ground opposite the Hot Springs hotel; and, if so, who built it?
A. No, sir; I do not recollect. I recollect seeing a fence there distinctly after the war, but I do not know who built it.

193 Mr. Benjamin offers in evidence the pleadings in the case of Gaines and the Belding heirs against Wm. and Elizabeth Sumpter, filed January, 1866; also a writ of possession for the property commonly known here as the Sumpter property, and the return of the sheriff putting Gaines in possession under *mean* process.

WILLIAM H. GAINES sworn and examined.

Examined by Mr. BENJAMIN:

Q. State your name, age, and residence.
A. Wm. H. Gaines; age, 80, and reside at Hot Springs.
Q. State whether you ever made a lease in writing with James Sumpter or not.
A. I did.
Q. State what has become of that lease.
A. I have searched everywhere for it.
Q. Have you any copies?
A. There was in a good many cases.
Q. Look at that and see if it is a copy.
A. I presume it is; they were all copied by a man by the name of Knight at Little Rock correctly, and some filed in court and proved.
Q. You are satisfied this is a correct copy?
A. Yes, sir; have had it read to me several times.

Copy of lease offered in evidence and marked Exhibit No. —.

Q. Was the store and three rooms that were reserved in this lease a part of the possession that you recovered by the writ of
194 possession and ejectment suit from Sumpter?
A. Yes, sir; leased them on the same day.
Q. To whom?
A. Kempner.
Q. Look at that and see if it is the lease you made.
A. It has been read to me. I know it is the lease.

Articles of agreement between Wm. H. Gaines and Kempner offered in evidence and marked Exhibit No. —.

Q. State what you know of this property being fenced up after the war by Mrs. Gaines and what occurred afterwards.

A. I got home on the 18th of May, 1865. That ground was fenced up partly with plank and rails in front of the Sumpter house. The Sumpter family had left here in 1864. My considering it her possession, and wanting to make a garden, had it fenced along there and it remained so for some time. After the Sumpter family came back they wanted to build in front. I objected to them doing it; they built back, then. How long the fence remained am not able to say, perhaps a year or two. Sumpter had taken possession; he tore down the fence passing through and used some of the rails elsewhere. My lawyer advised me to bring suit, which I did; they put
— the suits a long time and Judge Watkins, my lawyer, made
195 a proposition to Sumpter's lawyer to just pass them over without trying them, and I agreed to it. I think several courts were just passed in that way by an agreement of counsel. When the hotel was built the ground there became more valuable in 1870 or 1871, and one morning I found that Sumpters had been at work and put a fence along there. My people insisted that I should not go over there. I told them I should certainly go, as I had no fear. I went over there and had a few words with them and told them they were acting contrary to law and order and to stop fencing up the ground, and they said they would do it. They continued to fence it up and took in a good deal of ground in back, run it along down the street on the ground that I had been put in possession of by the sheriff in the suits brought after the courts gave me judgment against parties. They fenced up a great deal of ground they never had in possession and run a fence down off the mountain, fencing in my improvements. I paid no attention to it and just let them go on.

Q. Any of them armed?

A. I think they were all armed. I remonstrated against their acting in violation of law and order and that I was legally in possession of it.

By Mr. CURL:

Q. This lease that you showed here was executed at the time it bears date?

196 A. Yes, sir.

Q. How long after you got judgment against Sumpter?

A. Pretty soon afterwards.

Q. Was the suit based upon the certificate of entry of the Belding heirs?

A. Yes, sir.

Q. State if there was not an agreement between you and Mr. Sumpter before the trial of that case in February, 1856, by which Mr. Sumpter was not to answer in that suit and let judgment *nil dicit* go against him.

A. I think not.

Q. Was there not an agreement between you and he that he was to take these lands and remain in possession until the question of the right to the property was settled, or rather the right of the Belding heirs was determined, and in the event the Belding heirs did not obtain the right of entry he was to remain in possession?

A. No, sir; I got judgment against Sumpter for back rent. I did not want his money. I was only fighting for the land, and told him that he could remain there at a nominal price; told him he could give me these three houses for my own use, and that I would lease him all the balance and his bath-house. He told me
197 he would agree to it when he came home, but it was after the judgment. The judgments were all got at the same court, and the compromise was made in the presence of Sharp and Stedham, who drew the lease.

Q. Were you put in actual possession by the sheriff?

A. Yes, sir; did not put out Mr. Sumpter because he agreed to the compromise and signed the lease the same day. I leased to Kempner three rooms at $12 a month.

Q. Was this arrangement made at the time or previous to the time that the sheriff came with the writ of execution?

A. Yes, sir; he returned the execution satisfied.

Q. Did you build any house upon that land at that time?

A. No, sir.

Q. What title had you to the ground?

A. An occupant's title under the last act of Congress.

Q. At the time you say you made this lease, was it the time you brought the suit?

A. Yes, sir.

Q. What was your evidence of title at that time?

A. The suit shows that. The evidence of title was the certificate of entry and the purchase-money, and that was fully sustained by the courts and confirmed by the Supreme Court of the United States.

198 Q. Didn't you get that certificate of entry by representing to the departments at Washington that you simply wanted to get it to give you a standing in court?

A. I did not; my attorney may have done so.

By Mr. MURPHY:

Q. Did you not apply to the land office at Washington, Arkansas, first to enter this land—this quarter section?

A. I did not; Mrs. Belding had, long before I knew her.

Q. Did you afterwards apply, either in person or by attorney, at the land office at Washington, Arkansas, to get a certificate upon which you sued Sumpter?

A. No, sir; I applied to the Secretary of the Interior to refer the claim of the Belding heirs as filed there in the office back for re proof, all of which is here before the commission.

Q. Do you not know that your certificate was issued or ordered to be issued upon the representation made by yourself or your counsel

to the department that you merely wanted — to give you a standing in court, and not with the expectation of getting a patent upon it?

A. I do not know that there was any such thing.

Q. Was that your understanding?

A. I know I would never have any such thing.

199 Q. You don't know there was any such representation made to any of the departments to that effect or not?

A. I think it is possible my attorney, A. H. Mills, may have made application; I do not know it.

Q. Which one of the parties had the gun when they were fencing?

A. I would not be positive as to which one; I was too blind.

Q. Can you state that the fence you understood your wife to build enclosed that ground completely?

A. Yes, sir; the bulk of it.

Q. It made an enclosure around part of it?

A. Yes, sir; it was so when I got home the 18th of May.

Q. Was it the understanding between you and James Sumpter prior to or at the time of the execution of that lease that if that arrangement was made he should be left to remain in possession at a nominal rent until the question as to whether the Belding heirs would get a title should be settled; and if not settled favorably to them, was it not the understanding that then your rights as nominal landlord should cease and he should remain in possession without any reference to you or your rights?

A. Had no bargain of that sort.

200 Q. Was that the understanding between you?

A. I frequently said I should not claim anything; there was no particular understanding.

Q. Did you, in this city, or have you not in this place, frequently said since the war to John and William Sumpter that you made no claim to that land unless your title, or the title of the Belding heirs, should be sustained?

A. I do not think I had had any special contract of any sort.

Q. Have you made statements to them to that effect?

A. I claim the land under the laws of the country, and am entitled to it now. I made no claim to anything after the court decided against me. I disclaimed owning anything or having a transaction with anybody, buying or selling, until Congress passed the land law, which, I think, gives me a perfect right to the property. I do not say I am entitled to it. If I am entitled to it under the law of the country of possession and occupancy, I am the largest occupant. I have spent four times as much money on the property as anybody else, built more houses, and brought the property up into notice.

Q. Have you not in this city since the war talked to Wm.

201 and John Sumpter, the adverse petitioners, frequently about this matter, and have you not told them in these conversations that you had no claims against them whatever in reference to the land unless your pre-emption certificates should be sustained?

A. I am claiming——

Q. I am not asking you how you are claiming. Have you made such statements as those?

A. I think likely I have made such statements I made no such bargains with any one.

By Mr. RICE, attorney for Mr. Hobson:

Q. Since 1867 has there been any improvements on that piece of ground fronting the Hot Springs hotel, that was enclosed by your wife, except the fence that you have described that the Sumpters put up?

A. I think the fence that my wife put up there covered that very ground.

Q. In 1867, after that fence was away?

A. Is that the date of the lease to Chidester?

Q. The lease to Chidester? I am speaking of the ground south of Chidester's stable, including Dr. Hobson's office, and that vacant ground below there. Was there any buildings on that ground, any improvement except the fence that your wife built and was taken away, and since that, except the fence built in 1870 by the Sumpters?

202 —. Not by the Sumpters. There was a house built there adjoining the stable and Dr. Hobson's office.

Q. When were they built?

A. I cannot tell exactly.

Q. Before they were built was not that vacant ground, with the exception of the fence, put up in 1870?

A. Yes, sir.

Q. Had it not been vacant all the time after the time the fence was put up by your wife up to the time Dr. Hobson's office was built?

A. Yes, sir.

Q. And vacant at the time Hobson's office was built?

A. I think so.

By Mr. RICE, as attorney for Chidester:

Q. Has there been any improvements since the war in the way of buildings upon the lot of ground where the El Paso stable is now standing up to the time it was built?

A. No, sir; no improvements there when I leased the ground from Mrs. Chidester; might have been some patches of fence.

By Mr. BENJAMIN:

Q. Here is a contract between you and Walingford. Is that your signature?

A. Yes, sir.

Q. You had such a contract and it was reduced to writing?

203 A. Yes, sir; and built a house where Louis Bertsch now holds.

Q. State whether you had one with Gillis to build a stable.

A. Yes, sir.

Q. Where is that stable?

A. South of the house. Put all those buildings up and the dwelling-house at the same time, and that is where Toole and others are. Most of them are my houses, and when the receiver came they were turned over to him. They are the houses that I built.

Q. State whether you kept them up or tried to keep them up until after this decree.

A. Yes, sir; I tried all the time to keep them up.

Q. And were torn down frequently and repaired?

A. Yes, sir.

By Mr. HORRALL:

Q. Here is what purports to be a lease of a lot of ground by you to Gillis. Do you know whether or not that is the original lease?

A. I do not. I think there were two or three contracts with Gillis.

By Mr. BENJAMIN:

Q. Contract to build a stable?

A. I furnished all the lumber; had such a contract.

By Mr. HORRALL:

204 Q. Does this profess to be a lease between Wm. Gaines and Gillis for a parcel of ground situated on the east side (reading from lease)?

A. That is the ground exactly; it is the Gillis stable and dwelling-house which was cut into two apartments to rent, and the stable makes three.

Q. By what right did you assume to lease this ground—a right of yourself or as agent of the Belding heirs?

A. Myself; some of them were in the name of the Belding heirs and some in my individual name.

Q. Did you lease it as your own ground?

A. By representing the Belding heirs—being one of those heirs—and also representing Wm. Gaines individually. Where I have bought and built I have considered it my own property, not the property of the Belding heirs. These heirs will get from me all that they would be entitled to where I have got possession.

ALPHONSO CURL sworn and examined.

Examined by Mr. BENJAMIN:

Q. State your name, age, and residence.

A. Alphonso Curl; age, 37, and reside at Hot Springs.

Q. State whether you were formerly an agent of Mr. Gaines.

A. I was the agent of Major Gaines and collected all his
205 rents in 1873 and some little time before that.

Q. Look at that lease and see if it was drawn up by you or not.

A. I wrote that lease.

HIRAM IRWIN recalled:

Q. Are you acquainted with Major Gaines and wife?

A. Yes, sir.

Q. State whether you were employed or assisted in any way in building a fence at any time for Major Gaines; and, if so, when and where.

A. I think it was about four years ago I fenced up a piece of land near where the depot now is. He came to me one day and made a proposition that we build a partition fence between us, he to furnish a part of the material and I was to do the work.

Q. Where was it?

A. It ran pretty much north and south on what was his line; it was built of cedar posts and of good planks; it ran upon the mountain, going north some 30 or 40 rods; then Major Gaines went with his hands, continued the fence up the mountain, and, I suppose, clear around. It enclosed about four acres near the depot.

By Mr. WALSH:

Q. When was this partition fence constructed?

A. About four years ago.

206 By Mr. RICE: From the point where you commenced that fence to run north, state whether there was a fence running south.

A. Yes, sir.

Q. How far this side of the depot was that fence?

A. Right near where Capt. Roe's stable now is, about forty steps this side of the depot.

By Mr. HARRALL:

Q. Do you recollect about what time it was that Major Gaines built that fence? Where did he commence it—at his house?

A. This new fence commenced, I think, at his horse lot—he had a horse lot around his stable—and went to the Benton road; then it turned and went north and then joined me.

By Com. COBURN:

Q. Was there any cleared land northeast of the horse lot?

A. I don't think there was in the piece I am speaking of now—the mountain side of the Benton road. It was just regular woods.

Q. Did you see anybody at the time Mr. Gaines was running his fence from the horse lot east attempting to put up improvements on the north side of the line?

A. I didn't see them at work, but saw plank and lumber where they said Mr. Ducker was putting up a building.

Q. Did you see anybody at work on that improvement at any time?

A. No, sir.

207 —. How much lumber did you see on thh ground?

A. Really I do not know; some four *of* five loads.

GEORGE M. FRENCH sworn and examined.

Examined by Mr. BENJAMIN:

Q. State your name, age, and residence.

A. George M. French; age, 42, and reside at Hot Springs.

Q. State whether you made a survey of the Hot Springs reservation during 1875 or not.

A. I did.

Q. State the condition at that time of Major Gaines' fences and fields east of Hot Springs creek.

A. There was an old field southeast of the cemetery there and a fence along by the Malvern road, very near the township line, little north of it, but there was a fence along there that was intended to have been put upon the line and was out perhaps 1,600 feet, and was along in front of some houses built by the colored people on the hill; then there was a fence bearing to the left, running north, continuing on down, which would now be just east of the enclosure of Richard Irwin, north or west of the depot building, and joined a fence coming down on the south side of the Benton road. There was a fence on both sides of the Benton road.

Q. What fence was there on the north side of the Benton road?

208 A. There was an enclosure fence on the north side and an enclosure of a plank fence that took in the lot east of Major Nelson's place—seemed to be a horse lot—and further on was another board fence that ran up north, up the hill, as far, I should think, as the claim of Mrs. Murphy, on the side of the mountain; then followed down and included the house occupied by Mr. Davis, and came down and to the fence north of Major Gaines' residence, and joined on there.

Q. You were here when the receiver took possession?

A. Yes, sir.

Q. Do you know the condition of the fence about that time?

A. There had been an avenue opened up called the Gaines avenue; run down from the Benton road, south of the cemetery, to the depot. I mean the Malvern road.

By Mr. WALSH:

Q. What buildings were in the enclosure at that time?

A. A good many.

Q. Did you trace the lines?

A. Yes, sir; I traced all the enclosures and made all the lines on the map to correspond with them.

Q. What kind of a fence was on the top of the mountain?

A. Posts and rail on the mountain. The fence did not go
209 on the top of the mountain. There is a line on the map showing that fence.

Q. You are positive there was a fence alongside of the mountain?

A. You remember where the stable burned down with the mules in it. It was right north of that. It started right opposite that and went right up the hill.

Q. Do you know whose fence that was?
A. I suppose it was Major Gaines'.
Q. Was there an enclosure east of that?
A. There was an enclosure on three sides, but none on the north side; east going out to the quarter-section line—going out to McGovern's.

By Com. COBURN:

Q. What was the condition of the ground east?
A. It was timber ground except around the house and horse lot.
Q. What was the condition of the ground east of Gaines avenue?
A. It had all been cleared, as now, as far as the depot building. On the left-hand side of the Benton road it was natural timber land until you got to Irish Jimmie; then there is a cultivated field there a little place where Roe's stable is now that had been cleared off.

FEBRUARY 12TH, 1878.

Offered in evidence contract between Wm. H. Gaines and John J. Gillis, dated Feb'y 13, 1873, marked Exhibit A.

210 Also offers in evidence contract in regard to a building between Gaines and Foster and Walingford, dated 1st of January, 1871, marked Exhib- B.

Also a lease referring to the same parties in reference to building what is known as the Bertsch house, marked Exhibit C.

Also lease to Louis Bertsch from Wm. H. Gaines for the same property, marked Exhibit D.

Also contract of lease between Wm. H. Gaines and S. J. Bumton, marked Exhibit E.

Also bill of S. Cloyes for certain improvements, dated Aug. 1st, 1873, marked Exhibit F.

Know all men by these presents that I, William H. Gaines, of the county of Garland and State of Arkansas, do hereby appoint and constitute Albert B. Gaines, of the city of Hot Springs, county of Garland and State of Arkansas, my agent and attorney-in-fact, for me and in my name to demand, obtain, and receive from the Hot Springs Commission any certificate, award, or any other paper or evidences of indebtedness that may be issued to me and in my name or for my benefit granting me pay for any buildings or improvements, condemned, situated on any of my claims, and to receipt to said commission in my name for any and all such certificates; also to receive in my name and stead and receipt for

211 same any certificate, award, or any other paper given by said commissioners to me giving me the right to purchase from the United States Government all lots or parcels of land described in my petition, number —, and to do any and all acts for me and in my name necessary to be done in order to secure a title from the United States Government to said premises to the same effect as if personally present. My said attorney is hereby empowered to perform all such matter as he may deem necessary for the purpose of

carry- out the objects herein mentioned, and I hereby ratify and confirm all that he may do in the premises.

Witness my hand and seal this 11th day of December, 1879.

WM. H. GAINES. [SEAL.]

STATE OF ARKANSAS, } ss:
County of Garland. }

Be it remembered that on this day personally appeared before the undersigned, a notary public within and for the county aforesaid, Wm. H. Gaines, to me well known as the person signing the foregoing power of attorney, and acknowledged that he executed the same for the uses and purposes therein mentioned and set forth.

Witness my hand and seal as such notary public on this 11th day of December, A. D. 1879.

JAS. G. ALLEN,
Notary Public.

[Seal Jas. G. Allen, Notary Public, Garland Co., Ark.]

212 This article, descriptive of the improvements of Abigail Dupass, late Abigail Sabin, at Hot Springs, in the county of Hot Springs and State of Arkansas, lately sold to Wm. H. Gaines and to be delivered to said Gaines on the 1st day of April, 1852, represents that the claim and improvements sold as aforesaid are as follows, to wit: Lying on the east side of Hot Spring creek, immediately at the foot of the Hot Spring mountains, including two hot springs on the spur of the mountain; also a number of cabins at the foot of the mountain, with stables, corn-cribs, a garden, and other lots adjoining the stable; also a field and other cleared land near said buildings; also a large field, or rather a part of said field, near by the improvements aforesaid; all of which said improvements as aforesaid extend over and cover some twenty acres, more or less, consisting of all the improvements on the east side of said Hot Spring creek, lying on the southwest fourth of section thirty-three, township two south, range nineteen west, except a small lot and dwelling-house known as Richard Puckett's and one other small cabin near the lower Hot Springs and a small mill-house and a cabin known as White's mill. The sale of the aforesaid improvements to the said Gaines is upon such condition and terms
213 as are especially set forth in the conveyance of the said Dupass to the said Gaines, heretofore made in writing, and this article is intended as a more full description of the premises aforesaid; and the said Abigail Dupass does hereby deliver unto Lydia Belding, for said Wm. H. Gaines, the entire possession of the premises aforesaid, and does hereby acknowledge the payment of seven hundred dollars to her, the said Dupass, being in full for the improvements and premises conveyed as aforesaid, this 25th day of March, A. D. 1852.

A. DUPAS.

List of Real Property Assessed for Taxation in Hot Springs Co. for the Following Years.

Owners of land.	Part of sec.	No. of acres.	Section.	Town-hip.	Range.	Valuation.	Remarks.
Belding, Ludovicus	S. W.	160	23	2	19	70000	Assessor's book for 1862.
Belding heirs	S. W.	160	33	2	19	20000	" " " 1866.
Belding heirs	S. W.	160	33	2	19	20000	Collector's " " 1866.
Belding heirs	S. W.	160	33	2	19	20000	Assessor's " " 1867.
Belding heirs	S. W.	160	33	2	19	20000	Collector's " " 1867.
Belding, L., heirs	S. W.	160	33	2	19	20000	Assessor's " " 1868.
Belding, L., heirs	S. W.	160	33	2	19	20000	(Before reconstruction. (Collector's book for 1868.
Belding heirs. Sam. Tate & Co	*S. W.	*160	*33	.....	.....	10000.00	(Assessor's " " 1868.
Belding heirs	S. W.	160	33	2	19	(10000 (70000	(After reconstruction. (In junction, 1868.
C't c't sustains injun ction, collector c redited same.							
Belding heirs	S. W.	160	33	2	19	(60000) (10000)	Assessor's book for 1869.
Belding heirs	S. W.	160	33	2	19	10000	Collector's " " 1869.
Belding heirs	P't S. W.	160	33	2	19	15000	Assessor's " " 1870.
Belding heirs, 1870	S. W.	160	33	2	19	15000	Collector's " " 1870.
						Equalized to $80000.	
Belding heirs	S. W.	160	33	2	19	10000	Collector's " " 1871.
Belding heirs	S. W.	160	33	2	19	80000	Collector's " " 1872.

* Erased in copy.

STATE OF ARKANSAS, }
County of Hot Spring. }

214 I, John W. Keith, clerk of the circuit court in and for said county, do hereby certify that the annexed and foregoing is a true and perfect copy and transcript of the assessment of the foregoing land as the same appears on the tax books now on file in my office for the years as set forth in said transcript; and I further certify that the tax books from the year 1852 to 1862 are not to be found in their office; that the same were lost during the war or burned with the court-house in 1873.

In testimony whereof I have hereto set my hand and [SEAL.] the seal of said court on this 12th day of February, A. D. 1878.

JOHN W. KEITH, *Clerk.*

Know all men by these presents that I, George Belding, in consideration of one dollar in hand paid and a written agreement bearing even date herewith to convey a certain portion set out in said written agreement that may be awarded to Wm. H. and Maria Gaines, do quitclaim, transfer, assign, set over, and release all my right, title, and interest of every description in and to the southwest quarter of section (33) thirty-three, township (2) two south, and range nineteen west, except that portion on the east side of Valley street and south of and adjoining the ground leased by R. B. Clyde from Wm. H. Gaines, and extending south to the section line

215 and east to Hot Springs creek, which property said George Belding has had in his possession for more than seven years, in the county of Garland and State of Arkansas, and which forms a part of what is commonly known as the Hot Springs reservation, to Wm. H. Gaines, his heirs and assigns; to have and to hold forever.

In witness whereof we have hereunto set our hands and seals, at Hot Springs, Arkansas, this 20th day of October, 1877.

GEORGE BELDING. [SEAL.]
AMANDA BELDING. [SEAL.]

COUNTY OF GARLAND, }
State of Arkansas. }

Be it remembered that George Belding, personally well known to me to be the party grantor signing the foregoing deed,—and acknowledged that he signed the same for the purposes therein stated; also at the same time and place appeared Amanda Belding, wife of said George Belding, and, in the absence of her said husband, acknowledged that she had signed her relinquishment of dower for the purpose therein stated and without any undue influence from her said husband, and I do so certify this 20th day of October, 1877, at Hot Springs, Arkansas.

GEO. W. BAXTER,
Notary Public.

216 [Seal Geo. W. Baxter, Notary Public, Garland Co., Ark.]

STATE OF ARKANSAS, *sct:*

In the Supreme Court.

Be it remembered that at a term of the supreme court of the State of Arkansas begun and held at the court-house, in the city of Little Rock, on the first Monday of January, A. D. 1855, amongst others were the following proceedings, to wit, on the 23d day of February, 1855, a day of said term:

PATRICK BURKE, Appellant,
vs.
WILLIAM H. GAINES *et al.*, Appellee. } Appeal from Hot Springs Circuit Court.

This cause came on to be heard upon the transcript of the record of the circuit court of Hot Spring county and was argued by counsel. In consideration whereof it is the opinion of the court that there is no error in the proceedings and judgment of said circuit court in this cause.

It is therefore considered by the court that the judgment of said circuit court in this cause rendered be, and the same is hereby, in all things affirmed with costs.

It is further considered that said appellees recover of said appellant all their costs in this court in this cause expended and have execution therefor.

217 In testimony that the above is a true copy of the judgment of said supreme court rendered in the case therein stated I, Luke E. Barber, clerk of said supreme court, hereto set my hand — affix the seal of said court, at my office, in the city of Little Rock, this 7th day of February, A. D. 1878.

Seal of the Sureme Court of Arkansas.

L. E. BARBER, *Clerk.*

218 DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *June 28th*, 1884.

I, N. C. McFarland, Commissioner of the General Land Office, do hereby certify that the annexed copy of petition No. 362 before the Hot Springs Commission, testimony submitted in support of same, and the finding of the commission are true and literal *e*memplifications of the originals on file and on record in this office.

In witness whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.] N. C. McFARLAND,
Commissioner of General Land Office.

UNITED STATES OF AMERICA:

Hot Springs Commission.

HOT SPRINGS, ARKANSAS, *June 18th, A. D.* 1877.

In the Matter of the Claim of GEO. H. SMITH.

To the Hot Springs commissioners:

The petitioner, Geo. H. Smith, now residing at Hot Springs, Garland county, in the State of Arkansas, represents that he claims the following-described tract of land, a map of which is filed herewith and made a part hereof, situated in the Hot Springs reservation, which tract is bounded as follows, to wit, on the north by an alley, with a line running south 81° W. 100 ft.; on the west by Sumpter's claim, with a line running S. 9° E. 31 ft.; on the south by an
219 alley, with a line running N. 81° E. 100 ft.; on the east by Valley street, with a line running N. 9 W. 31 ft. to the place of commencement, lying and being in the S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W.

This indenture, made and entered into by and between John Kubler and Christina Kubler, his wife, and Godfrey Kubler and Louisa Kubler, his wife, all of Garland county, State of Arkansas, parties of the first part, and Dr. G. H. Smith, of the same county and State, party of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of four hundred dollars ($400) to them in hand paid by the said party of the second part, the receipt of which is hereby acknowledged, have bargained, sold, conveyed, released, remised, and quitclaimed, and by these presents do bargain, sell, convey, release, remise, and quitclaim, unto the said party of the second part and to his heirs and assigns forever all their right, title, and interest, as well in expectancy as in possession, in and to that certain tract of land situate in the city of Hot Springs, upon the Hot Springs reservation, in Garland county, State of Arkansas, more particularly described as follows, to wit: That part of the southwest quar*etr* of the southwest quarter of section thirty-three (33), in township two (2) south, of ran*me* nineteen (19) west, in the Hot Springs reservation, beginning

four (4) chains and sixty-one (61) links south 29° E. where the southern boundary line running east and west crosses the section- 32 and 33, in said township and range, of the private survey of Francis Langlois, known as the "New Madrid claim," thence east 1° north along the north side of the German house about one foot therefrom one hundred and two feet four inches (102 ft. 4 in.) to the west side of Main street, to the northeast corner of the Kubler house porch; thence along the west side of said Main street forty-four links
220 south 1° east twenty-nine feet three inches (29 ft. 3 in.) to the southeast corner, thence west 1° south ninety-six feet (96 ft.) to a plank fence, thence north 16° west to the place of beginning, containing nearly seven one-hundredths ($\frac{7}{100}$) part of an acre, being the lot or parcel of land on which the German house and gunsmith shop adjoining is located, in said city of Hot Springs, State of Arkansas, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and all right, interest, or benefit that may hereafter accrue to us by virtue of our possession and improvements on said property, together with all dower and right of dower which the said parties of the first part have in and to the above-described premises, with all appurtenances thereon; to have and to hold all and singular the above-mentioned premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns forever.

In witness whereof the said parties of the first part have hereunto set their hands and seals this 12th day of September, 1876.

JOHN KUBLER.
CHRISTINA KUBLER.
GODFREY KUBLER.
LOUISIA D. KUBLER.

Witness:
F. SCHICKER.

STATE OF ARKANSAS, }
County of Garland. }

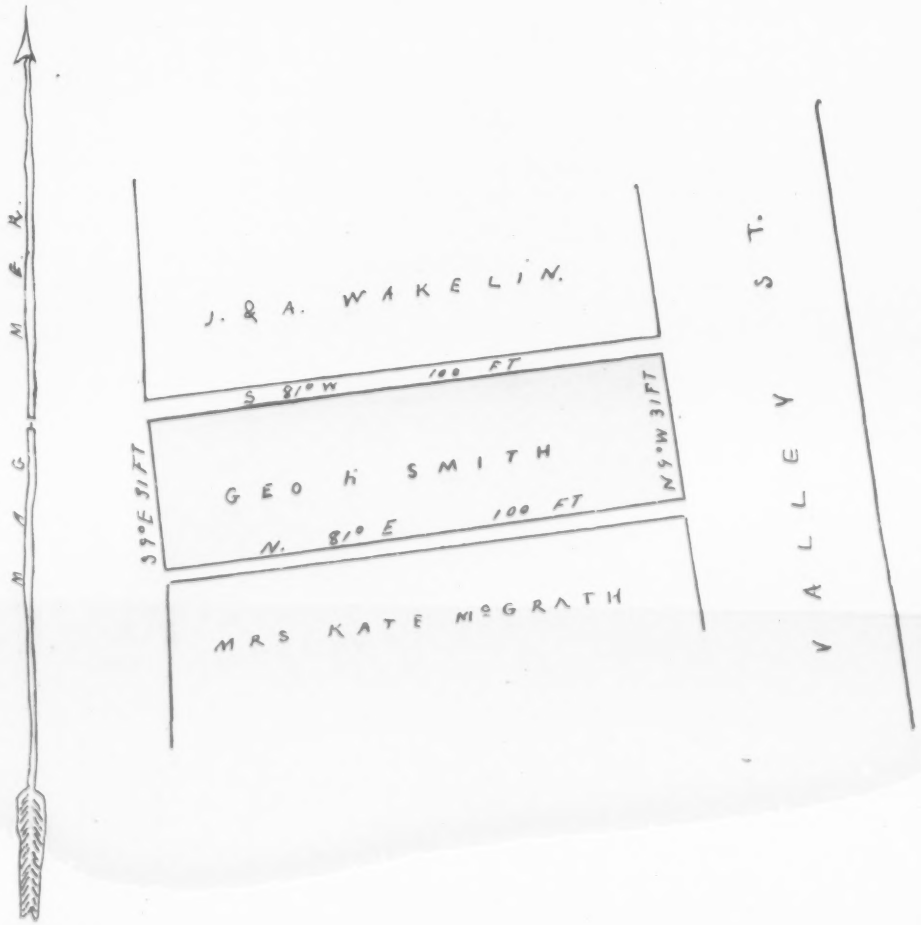
Before me, T. P. Grim, a justice of the peace in and for the said county and State, on this 12th day of September, 1876, personally appeared John Kubler and Christina Kubler, his wife, and Godfrey Kubler and Louisia Kubler, his wife, to me personally known to be the same persons whose names are subscribed to the foregoing deed as grantors, and acknowledged that they had executed the same for the consideration and purposes therein mentioned and set forth.

221 And the said Christina Kubler, wife of the said John Kubler, and the said Liuisia Kubler, wife of said Godfrey Kubler, having voluntarily appeared before me and having been by me, separate and apart and out of hearing of their respective husbands, duly examined, they declared that they had of their own free will executed the said conveyance and has signed the relinquishment of their dower for the purposes therein set forth without compulsion or undue influence of their respective husbands, and they do not wish to retract the same.

Geo. H. Smith's

CLAIM

No. 302.
George H. Smith
v.
Wm H Gaines et al.
} p. 222.



In testimony whereof I have hereunto set my hand this 12th day of September, 1876.

T. P. GRIM, *J. P.*

Recorded in Book "B," on pages 401 and 402.

That the following-described improvements are situate thereon, to wit: A two-story frame storehouse, 29½ x 40 ft.

That they were erected by John Kubler in the conth of ——, in the year 1876; that they are of the value of fifteen hundred dollars.

The petitioner further sayr that he claims to be the owner of the said premises and entitled to purchase the same from the United States upon the following grounds, to wit: That he purchased the above-described premises from John Kubler and his wife and Godfrey Kubler and his wife, as will appear from a quitclaim deed, a copy of which is hereto attached; that he has had peac-able possession of said premises ever since he purchased the same, and that he knows of no other claimant for any portion of said lot.

(Here follows diagram marked p. 222.)

223 This indenture, made and entered into by and between John Kubler and Christina Kubler, his wife, and Godfrey Kubler and Louisia Kubler, his wife, all of Garland, State of Arkansas, parties of the first part, and Dr. G. H. Smith, of same county and State, party of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of four hundred dollars ($400) to them in hand paid by the said party of the second part, the receipt of which is hereby acknowledged, have bargained, sold, conveyed, released, remised, and quitclaimed, and by these presents do bargain, sell, convey, release, remise, and quitclaim, unto the said party of the second part and his heirs and assigns forever all their right, title, and interest, as well in expectancy as in possession, in and to that certain tract of land, situate in the city of Hot Springs, upon the Hot Springs reservation, in Garland county, State of Arkansas, more particularly described as follows, to wit:

That part of the southwest quarter of the southwest quarter of section thirty-three (33), in township two (2) south, of range nineteen (19) west, on the Hot Springs reservation, beginning four (4) chains and sixty-one (61) links south 29° east where the southern boundary line running east and west crosses the sections 32 and 33, in said township and range, of the private survey of Francis Langlois, survey known as the "New Madrid claim," thence east 1° north along the north side of the Garman house, about one foot therefrom, one hundred and two feet four inches (102 ft. 4 in.) to the west side of Main street, to the northeast corner of the Kubler-house porch; thence along the west side of Main street forty-four links south 1 east twenty-nine feet three inches (29 ft. 3 in.) to the southeast corner, thence west 1° south ninety-six feet (96 ft.) to a plank fence, thence north 16 west to the place of beginning, containing nearly seven one-hundredths ($\frac{7}{100}$) part of an acre, being

the lot or parcel of land on which the German house and gunsmith shop adjoining is located, in said city of Hot Springs, State
224 of Arkansas, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and all right, interest, or benefit that may hereafter accrue to us by virtue of our possession and improvements on said property, together with all dower and right of dower which the said party of the first part have in and to the above-described premises, with all appurtenances thereon; to have and to hold all and singular the above-mentioned premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns, forever.

In witness whereof the said parties of the first part have hereunto set their hands and seals this 12th day of September, 1876.

JOHN KUBLER.
CHRISTINA KUBLER.
GODFREY KUBLER.
LOUISIA KUBLER.

Witness:
F. SCHICKER.

STATE OF ARKANSAS, }
County of Garland. }

Before me, T. P. Crim, a justice of the peace in and for the said county and State, on this 12th day of September, 1876, personally appeared John Kubler and Christina Kupler, his wife, and Godfrey Kubler and Louisia Kubler, his wife, to me personally known to be the same persons whose names are subscribed to the foregoing deed as grantors, and acknowledged that they had executed the same for the consideration and purposes therein mentioned and set forth.

And the said Christina Kubler, wife of the said John Kubler, and the said Louisia Kubler, wife of the said Godfrey Kubler, having voluntarily appeared before me, and having been by me, separate and apart and out of hearing of the-r respective husbands, duly examined, they declared that they had of their own free will
225 executed the said conveyance and had signed the relinquishment of dower for the purposes therein set forth without compulsion or undue influence of their respective husbands, and that they do not wish to retract the same.

In witness whereof I have hereunto set my hand this 12th day of September, 1876.

T. P. CRIM, *J. P.*

STATE OF ARKANSAS, }
County of Garland. }

I, A. W. B. Reed, county clerk, circuit clerk, and *ex officio* recorder in and for the county of Garland aforesaid, do hereby certify that the for-going deed was filed in my office for record on the 13th day of September, A. D. 1876, at 1.30 o'clock p. m., and the same is now duly recorded, with the proper acknowledgements and certificates thereon, in Record Book "B," on pages 401 and 402.

— —.

The petitioner files herewith copies of the documents hereinbefore referred to and makes them a part hereof.

Wherefore he prays that the commissioners shall adjudge to him the right to purchase the said premises from the United States and for other proper relief.

GEO. H. SMITH.

Endorsed: No. 362. Hot Springs Commission. Petition of Geo. H. Smith. Lot 2, block 77. Filed Aug. 30th, 1877. J. W. Anderson, clerk H. S. Commission. Examined Feb. 13th, 1878; —— 27, 1878. Adjudicated Oct. 7th, 1879. Record B. 2, p. 77.

226 HOT SPRINGS, ARK., AND IN THE TOWN OF HOT SPRINGS.

This agreement, made and concluded this 1st day of October, 1870, between Wm. H. Gaines, party of the first part, and John Kubler, party of the second part, witnesseth: That the said Wm. H. Gaines, for and — consideration of the terms hereafter expressed, hath rented or leased to the said John Kubler for his use and benefit all the portion or parcel of land situate in Hot Springs, Ark., described as follows: commencing ten feet south of shoemaker's shop and running twenty feet on front west side of street back to Sumpter's fence, for the space and term of three years or until the title to the Hot Springs quarter section is settled; said Kubler to have the privilege of erecting a house and have the prrvilege of removing such buildings as he may erect at the termination of lease; said lease not to be transferred without consent of Wm. H. Gaines, party of the first part. The said Kubler, for himself, his heirs and assigns, agrees to pay to the said Wm. H. Gaines, his landlord, or his heirs and assigns, the sum of two hundred dollars ($200) a year, to be paid every quarter in advance, the sum of fifty dollars ($50); rent to commence on the 1st day of October, in the year of our Lord (1870) eighteen hundred and seventy.

WM. H. GAINES. [SEAL.]
JOHAN KUB-ER. [SEAL.]

$50. Received of John Kubler $50 for the first quarter, commencing on the 1st day of October, 1870, to the 1st day of January, 1871.

WM. H. GAINES.

Endorsed: 362. Lease between Wm. H. Gaines and John Kubler. Quarterly in advance the sum of $50 each and every 1st day of October, January, April, and July. Exhibit A (in blue pencil).

227 Given in testimony in claim of G. H. Smith, No. 362, before the Hot Springs Commission. A. H. Cragin, ch.

This indenture, cade and entered into on the 2nd day of October, in the year 1876, by and between Albert I. Morg-n, receiver of the Hot Springs property, appointed by the Court of Claims under the authority of the fifth section of the "Act in relation to the Hot Springs reservation, in Arkansas," passed in the year 1870, party of

the first part, and G. H. Smith, of Hot Springs, in the county of Garland, State of Arkansas, party of the second part, witnesseth: &

That, in consideration of the rent hereinafter reserved and the stipulations herein contained, the said party of the first part, under the authorit- of said act and said court and on behalf of the United States, does hereby grant, demise, and to farm-let unto the said party of the second part a certain piece or parcel of land situated within the said Hot Springs reservation and described as follows, to wit:

Commencing at a point north 8° 30′ east of section corner post for section- 32 and 33, township two south, and sections 4 and 5, township -hree south, range nineteen west, and distant thence from 677 ft., thence bearing S. 81° west 100 ft., thence south 9° east 29 ft., thence north 81° east 100 ft., thence north 9° west 29 ft. to point of commencement, -ying and being in the southeast quarter of section 33, township 2 south, range nineteen west, all the above bearings being read from the magnetic meridian:

To have and to hold the same, with all the rights, privileges, and appurtenances thereunto belonging, unto the said party of the second part, his heirs, executors, administrators, and assigns, for the term of one year, commencing in the 2nd day of October, 1876, and fully to be completed and ended, the said party of the second part yielding and paying to the said party of the first part, his successor as receiver, as rent for the same, *of* 360 — for the term
228 aforesaid, payable in equal monthly installments of thirty dollars each, in advance, on the 1st day of each month of said term, at the office of said receiver, in Hot Springs aforesaid.

And, in consideration of the foregoing demise, it is covenanted and agreed between the parties as follows:

1st. The party of the second part shall not do or permit any waste of the demised premises during the term aforesaid or during any additional time after the close of said term, and that the said party of the second part may remain in possession of the premises.

2nd. At the expiration of said term the possession of the premeses shall be delivered to the party of the first part or *tis* successor as receiver or to any other agent or representative of the United States who may by law become entitled to receive such possession.

3rd. If the second party shall fail at any time to pay the rent aforesaid or to perform and fulfil any of the stipulations herein entered into in his part, or shall attempt in any respect to resist or obstruct or s-all aid, incite, or counsel others to resist or obstruct the authority of *tte* party of the first part as receiver or that of his successor in office, then, in any such case, *tte* party of the first part or his successor may, at his own well and without demand upon or notice to the party of the second part or to any one occupying the premises, enter into and upon the premises without taking any legal proceedings to that end and summarily and, if necessary, forcibly eject and expel from the premises the party of the second part and all *ither* occupants thereof and take full possession of the premises on behalf of the United States without being guilty of tres-

pars and without prejudice to any other remedies available to him or to the United States in such case either at law or in equity.

4th. There are upon the demised premises the following improvements, to wit: A two-story frame building, 20 ft. x 40
229 ft., used as a boarding-house. If during the said term the said building should be destroyed by the act of God or by fire not due to the fault of the lessee, or should in either of said ways be so damaged as to be unfit for habitation, then and in such case, if desired by the lessee, this lease shall be terminated; but if not so desired it shall remain in force as to the land and a proportionate rent for the land shall be paid, which proportionate rent shall be fixed by the party of the first part or his successor in office.

5th. If at the expiration of the term aforesaid the party of the second part should desire a renewal of this lease for a period not exceeding one year, the same may be so renewed by endorsement by the receiver upon this lease.

6th. No assignment of this lease nor any subletting of the decised premises shall be valid unless the consent of the party of the first part or his successor as receiver shall first have been obtained in writing.

7th. The party of the first part or his successor as receiver may at all seasonable times enter into and upon the demised premises and any buildings thereon for the purpose of examining the condition thereof.

In witness whereof the said parties have executed this lease in duplicate, signed their names, and affixed their seals to each part thereof the day and year first above written.

ALBERT O. MORGAN.
G. H. SMITH.

Executed in presence of—
WM. NELSON.
WM. NELSON.

Endorsed: Exhibit No. 1 (in blue pencil). 362. Receiver of the Hot Springs reservation to G. H. Smith. Lease expires Oct. 1st, 1877. Given in testimony in claim of G. H. Smith, No. 362, before the Hot Springs Commission. A. H. Cragin, ch.

230 In the Claim of GEORGE H. SMITH. No. 362.

FEBRUARY 13TH, 1878.

This claim is consolidated with that of Wm. H. and Maria Gaines, No. 784.

GEORGE H. SMITH sworn and examined.

Examined by Mr. MURPHY:

Q. State your name, age, and residence.
A. Geo. H. Smith; age, —, and reside at Hot Springs.
Q. Is the map filed with your claim a correct description of it?
A. Yes, sir; I believe so. Col. French made it.

Q. And that is the land you claim?
A. Yes, sir.
Q. What improvements are on it?
A. A two-story building 20 ft. wide and running back 58½ ft. I think, and then there is an additional one-story house, which is about 9½ ft. wide and runs back the same length as the other, except a little space in the center.
Q. When was this house built?
A. In 1870, I think.
Q. By whom?
A. Mr. John Kubler.
Q. How do you derive your claim to it?
A. By purchase from him.
Q. When did you purchase from him?
A. September 12th, 1876.
Q. What did you pay for it?
A. $400.
231 Q. Who was in possession when you bought?
A. John Kubler and wife.
Q. Who has been in possession since?
A. I have.
Q. Did you rent it from the receiver when he came here?
A. Yes, sir.
Q. Did you get a lease?
A. Yes, sir.

Lease from the receiver offered in evidence and marked Exhibit No. 1.

Q. Who is in possession now?
A. I am.
Q. What is the house worth?
A. I think about $1,500.

By Com. COBURN:

Q. What is it used for?
A. There is a part of it used for a drug store down-stairs. I sold the drug store a year ago; then I kept my office next door, and up-stairs I kept the rooms myself as a residence and rent some of the rooms.
Q. Is this office of yours part of the building you described?
A. Part of the house.
Q. Have you reckoned that office in the value of the improvements?
A. Yes.
Q. Was it built before the 24th of April, 1876?
A. Yes, sir; I bought them all together and have made no alterations since then.
Q. Then the whole breadth of your building is something like 30 ft.?
232 A. The whole building is 29 ft. 3 inches, and then there is an alley-way north of my office of about four feet.

Q. Between your office and the main building?
A. Between my house and Wakelin's building—a little alley that runs back to the Sumpters' house lot. We claim half of it as belonging to this building of mine and half to Wakelin's.

Cross-examination.

Examined by Mr. BENJAMIN:

Q. Were you here in 1870?
A. No; was in 1874.
Q. How do you know that Kubler built that house in 1870?
A. Because I have got Mr. Gaines' deed and Mr. Kubler's word.
Q. How did Mr. Kubler occupy that ground?
A. There is the lease.
Q. Who is it from?
A. Major Gaines.
Q. Did he show you that lease when you purchased it?
A. No, sir.
Q. You knew he had that lease when you purchased it?
A. I supposed he had.

JOHN KUBLER sworn and examined.

Examined by Mr. MURPHY:

Q. State your name, age, and residence.
A. John Kubler; age, —; and reside at Hot Springs.
Q. Did you hear me read the description of the land in
233 the petition of Mr. Smith?
A. Yes.
Q. Do you know that land?
A. Yes.
Q. What improvements are on it now?
A. House on it that I built and a shop.
Q. When did you build it?
A. In October, 1870.
Q. Did you built the office now occupied by Dr. Smith?
A. I built a house first and then a shop. I built the shop two years afterwards.

By Com. COBURN:

Q. Any buildings there when you built?
A. No; a few trees were on the land and I chopped them off.
Q. Did you rent the land from Major Gaines?
A. Yes.
Q. Was it enclosed with a fence or anything when you rented it?
A. Nothing at all.
Q. How long did you occupy the house?
A. Five years.
Q. What did you do with it?
A. I kept a boarding-house.
Q. Did you sell it to any one?

A. To Dr. Smith.
Q. Do you recollect the date of the sale to him?
A. It was September 10th or 12th, 1876.
Q. What is the office and house worth?
A. I don't know; it cost me $1,000.

234 Cross-examination by Mr. BENJAMIN:

Q. You say you had a lease from Major Gaines?
A. Yes, sir.
Q. Look at that and see if it is your lease.
A. Yes, sir.
Q. Is it your signature?
A. Yes.
Q. Did not Major Gaines have an old building removed from that ground about the time you leased it, so that you could build?
A. He did not.
Q. You are certain of that?
A. Yes.
Q. You paid Major Gaines rent regularly?
A. When I had the money.
Q. Is the rent all paid up or are you still behind?
A. I could not pay him all.

By Com. COBURN &:

Q. How much do you suppose you paid him in all?
A. About nine or ten hundred dollars.

WILLIAM H. MORRIS sworn and examined.

Examined by Mr. MURPHY:

Q. State your name, age, and residence.
A. Wm. H. Morris; age, 33, and residence at Hot Springs.
Q. Do you know the land and house described in this petition of Dr. Smith?
A. Yes, sir.
235 Q. How long since you first saw them?
A. Three months.
Q. Never before?
A. No, sir.
Q. What is your occupation?
A. Carpenter and builder.
Q. Have you examined that house?
A. Yes; at the request of Dr. Smith.
Q. State its value.
A. I measured the house and found it to be as it stands now 29 ft. 3 inches in front and 58 ft. 6 inches deep. I estimate the building as being worth about $1,650. To put up a new building like that would cost from $2,000 to $2,200.

By Com. COBURN:

Q. What state of repair is it in?
A. In good repair.

GEO. H. SMITH recalled:

Q. You said something about selling out the drug store in your testimony. State what you meant and what you sold.

A. When I first came here in 1874 I entered into business as a druggist and conducted it until a year ago, when I sold out the drugs.

Q. You did not sell the house, but sold your stock?

A. Yes, sir; I rented the lower story to the purchaser of the stock.

The original deed from Kubler to Dr. Smith, dated September 12, '76, marked Exhibit No. 2.

MMr. Benjamin offers in evidence the lease of Gaines to Kubler, dated October 1st, 1870, and marked Exhibit "A."

236 THURSDAY, *February 27th*, 1878.

In rebuttal, JOHN KUBLER recalled.

Examined by Mr. BENJAMIN:

Q. Do you know the ground occupied by Geo. H. Smith?

A. Yes.

Q. I believe you testified that a portion of that ground you had a lease for before you sold to Geo. H. Smith?

A. Yes.

Q. State whether Major Gaines gave you any permission to build and whether you paid any rent on the ground south.

A. I built on here a shooting gallery, and Major Gaines said he would not charge me anything as long as I did not build any more.

Q. You got permission of Major Gaines to build there?

A. Yes; I built a house. I got permission to use the ground from Major Gaines.

By Mr. MURPHY:

Q. It was all unimproved at that time?

A. Yes.

Endorsed: No. 362. In the claim of Geo. H. Smith. Testimony of Geo. H. Smith, John Kubler, Wm. H. Morris. Given before the Hot Springs Commission. A. H. Cragin, ch.

237 In the Claim of GEO. H. SMITH. No. 362.

TUESDAY, *October 7th*, 1879.

At this time comes the petitioner, Geo. H. Smith, and the commission, having heard and considered the petition and testimony, as also the testimony in claim No. 784, William H. Gaines and Maria Gaines, do say and find that the claim of the petitioner accrued prior to the 24th day of April, A. D. 1876, by reason of the use, occupation, and improvements of the premises described in the petition, and that the petitioner is the owner and entitled to the possession of the improvements made thereon.

And the commission, having had the premises surveyed and having inspected and caused the same to be platted, numbered, and scheduled and having appraised the same, as provided by law, and being sufficiently advised of the premises, do further say and find that the petitioner is entitled to purchase from the United States the following described land in Hot Springs, to wit, lot numbered 2, in block 77, for the sum — $705.00, that being the appraised value thereof.

It is therefore ordered and adjudged that the said Geo. H. Smith is entitled to purchase said lot numbered 2, in block numbered 77, for said sum of $705, and that a certificate be issued to him for the right to purchase the same, containing 2,890 feet.

238 Your petitioner avers that at the time they entered the premises herein claimed as aforesaid one Patrick Burke had made and claimed to own and had possession of certain improvements on the west side of Valley street. Patrick Burke and your petitisner brought suit against said —— —— on the 5th day of January, 1852, for said improvements and possession and recovered judgment therefor, which judgment was affirmed by the supreme court of the State of Arkansas and by the Supreme Court of the United States, and on the 26th day of November, 1857, your petitioner, Wm. H. Gaines, was by the court put in actual possession of said premises and improvements, and peac-ably continued to possess, control, use, and rent said premises until and including the 24th day of April, 1876, a period of more than twenty years, and after your petitioner had used and rented said improvements for over — years they became old and dilapidated and were insufficient to meet the demands of a growing town and of the large number of visitors that annually came to the Hot Springs for their health, and your petitioner, desiring to aid in meeting that demand, on the 1st day of October, 1870, leared the following ground to John Kubler, to wit: Commencing at a point N. 8° 30′ E. of sec. corner post for sects. 32 and 33, T. 2 south, and sects. 4 and 5, T. 3 south, all in range 19 west and distant therefrom 677 ft., thence bearing S. 81° W. 100 ft., thence S. 9° E. 29 ft., thence N. 81° E. 100 ft., thence N. 9° W. 29 ft. to point of comcencement, lying and being in the S. W. ¼ of S. W. ¼ of sec. 33, T. 2 south, range 19 west, all the above bearings being read from the magnetic meridian, with the privilege of erecting new and more commodious buildings thereon; and all the parties to said lease covenanted and agreed that said John Kubler might remove said new buildings within thirty days after the lease expired, provided the rents were fully paid, but it was expressly covenanted and agreed that no buildings should be removed unless the rent was paid, and that the same were to be removed within thirty days after the expiration of the lease—that is to say,

239 all buildings erected by John Kubler and assigns were to be the property of Wm. H. Gaines unless all rents were fully paid and unless the buildings erected were removed within thirty days after the expiration of the lease. Your petitioner avers that the rents upon said lease have not all been paid; that there was due on the 1st day of April, 1876, the sum of three hundred and

eleven dollars and eighty-five cents ($311.85), which rents still remain due and unpaid, and your petitioner avers that said lease, by its own terms long since expired, and that said John Kubler and assigns have wholly failed both to pay said rent and to remove said buildings within thirty days after the expiration of the lease, and your petitioner expressly avers that in consequence of said failure to pay said rent and remove said buildings as aforesaid that said buildings and improvements thus erected became and are the property of your petitioner, Wm. H. Gaines, both by the agreement of the parties and by the law of the land; that the said improvements were made previous to the 24th day of April, 1876, and are worth the sum of —. Your petitioner is informed that John Kubler is making no claim to said property, but that one G. H. Smith is setting up some pretended claim thereto; which claim is wholly unfounded in law and equity and is contrary to good conscience. Neither said Kubler or said Smith ever occupied or claimed said premises in their own right previous to April 25th, 1876. A copy of the lease is hereto attached and marked Exhibit 16 and prayed to be taken as a part hereof.

240 Your petitioner avers that at the time they entered the premises herein claimed as aforesaid one Patrick Burke had made and claimed to own and had possession of certain improvements on the west side of Valley street, and your petitioner brought suit against said Patrick Burke on the 5th day of January, 1852, for said improvements and possession and recovered judgment therefor, which judgment was affirmed by the supreme court of the State of Arkansas and by the Supreme Court of the United States, and on the 26th day of November, 1857, your petitioner, Wm. H. Gaines, was by the court put in actual possession of said premises and improvements and peaceably continued to possess, control, use, and rent said premises until and including the 24th day of April, 1876, a period of more than twenty years; and after your petitioner had used and rented said improvements for over — years they became old and dilapidated and were insufficient to meet the demands of a growing town and of the large number of visitors that annually came to the Hot Springs for their health, and your petitioner, desiring to aid in meeting that demand, on the 1st day of June, 1872, leased the following ground to Green Payne, to wit: Commencing at a point N. 8° E. of sec. corner post for sects. 32 and 23, town. 2 S., and sects. 4 and 5, T. 3 S., all in range 19 west and distant therefrom 695 ft., thence bearing south 79° 45′ W. 100 ft., thence N. 10° 15′ W. 15½ ft. to point of commencement, lying and being situate in the S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 west, all the above bearings being read from the magnetic meridian (said lease was assigned to John and Alfred Wakelin), with the privilege of erecting new and more commodious buildings thereon, and all the parties to said lease covenanted and agreed that said Green Payne might remove said new buildings within thirty days after the lease expired, provided the rents were fully paid; but it was expressly covenanted and agreed that no buildings should be removed unless the

241 rent was all paid, and that the same were to be removed

within thirty days after the expiration of the lease—that is to say, all buildings erected by Green Payne or assigns were to be the property of Wm. H. Gaines unless all rents were fully paid and unless the buildings erected were removed within thirty days after the expiration of the lease.

Your petitioner avers that the rents upon said lease have all been paid; and your petitioner avers that said lease by its own terms long since expired, and that said Green Payne and John and Alfred Wakelin, his assigns, have wholly failed to remove said buildings after the expiration of the lease; and your petitioner expressly avers that in consequence of said failure to pay said rent and to remove said buildings as aforesaid that said buildings and improvements thus erected became and are the property of your petitioner, Wm. H. Gaines, both by the agreement of the parties and by the law of the land.

That said improvements were made previous to the 24th day of April, 1876, and are worth the sum of three hundred dollars.

Your petitioner is informed that Green Payne is not claiming said property, but John and Alfred Wakelin are setting up some pretended claim thereto; which claim is wholly unfounded in law and equity and is contrary to good conscience.

Said Wakelin never occupied or claimed said premises in their own right previous to April 25th, 1876.

A copy of the lease is hereto attached and marked Exhibit 17 and prayed to be taken as part hereof.

242 This agreement of lease, made this 1st day of October, 1874, between Wm. H. Gaines, as lessor, and Herman Moscowitz, as lessee, witnesseth:

That the lessor has leased and demised to the lessee a certain lot or parcel of land lying and being situated in the county of Garland, in the State of Arkansas, as follows, to wit: Commencing twenty-one (21) feet north of the southeast corner of the log cabin which stands north of — adjoining McCarty & Bell's store, on the west side of the street near the south end of Hot Springs valley, runs thence north eighteen and one-half feet ($18\frac{1}{2}$), thence west to the Sumpter fence, thence east to the place of beginning; to have and to hold the same unto the said lessee for the term of one year from the first day of October, 1874, to be renewed from year to year, if the lessee shall so elect, until the title to the Hot Springs quarter section is settled, for the annual rental of one hundred and eighty-five dollars ($185), to be paid by the lessee to the lessor or his legal representatives, in installments of forty-six and $\frac{25}{100}$ dollars each, on the first day of each and every quarter during the continuance hereof; and the lessee covenants and agrees to pay to the lessor or his legal representatives the said rent of one hundred and eighty-five dollars per annum at the times and in the manner hereinabove provided, and to surrender peaceable possession of the premises to the lessor or his legal representatives at the expiration hereof; and it is agreed that all buildings and improvements that the lessee may erect on said lot may be removed therefrom by the lessee or his legal repre-

sentatives at any time within thirty days after the expiration of this lease if the rent thereon shall all have been paid, but the lessor shall have a lien on all such buildings and improvements to secure the rent hereinabove provided for, and no such buildings shall be removed from said lot while any part of said rent shall be due and unpaid.

If the lessee shall at any time make default and shall be in arrears with said rent or any part thereof for ten days after the same shall have become due the lessor or his legal representatives may,
243 at their own election, enter upon the premises, eject the lessee therefrom, repossess themselves of the same without notice or other legal process, and terminate this lease. This lease shall not be assigned or the premises underlet without the written consent of the lessor being first endorsed hereon.

In witness whereof the parties hereto have hereunto set their hands and seals at Hot Springs this 1st day of October, 1874.

WM. H. GAINES,
Per A. CURL, *Agent.*
HERMAN MOSCOWITZ.

244 STATE OF ARKANSAS, }
County of Garland. }

This is to certify that the lessor, Wm. H. Gaines, mentioned in the annexed and for-going lease, has leased to the lessee, Philip Helfrich, mentioned therein, the space of four feet lying and extending along the south side of the lot described therein, upon the same terms, for the same price, viz., ten dollars per front foot, and to continue during the continuance of the for-going and annexed lease, the lessee agreeing and covenanting to comply in all respects and perform all the obligations in respect to this additional four (4) feet as are mentioned in said lease; and it is further understood and agreed that the said Helfrich shall have the free use of two feet in addition thereto on the south side of said lot.

Witness the hands and seals of the parties at Hot Springs this 16th day of June, 1874.

WM. H. GAINES. [SEAL.]
PHILIP A. HELFRICH. [SEAL.]

Witness:
A. CURL.

245 *Agreement of Lease.*

This agreement of lease, made this 20th day of February, 1874, between Wm. H. Gaines, as lessor, and Philip Helfrich, as lessee, witnesseth:

That the lessee has leased and demised to the lessor a certain lot or parcel of land lying and being situate in the county of Garland, in the State of Arkansas, and described as follows, to wit:

Beginning at a point seven (7) feet south of the S. E. corner of Johnathan Brantley's store, on the west side of the street near the south end of Hot Springs valley, in Garland county, Arkansas, run thence south parallel with said street twenty-six (26) feet, thence

west to the Sumpter fence, thence north along said fence twenty-six feet, thence east to the place of beginning:

To have and to hold the same unto the lessee from the first day of March, 1874, until the title to the Hot Springs quarter section of land is settled; and the lessee covenants and agrees to pay to the lessor or his legal representatives an annual rent on said lot of two hundred and sixty dollars, in installments of twenty-one $\frac{66}{100}$ dollars each, on the first day of each and every month during the continuance hereof, and to surrender the said premises peaceably to the said lessor at the expiration of the said term of lease.

And it is agreed that buildings and improvements that may be erected on said lot by the said lessee during the continuance hereof may be removed therefrom by the lessee or his legal representatives at any time during the continuance hereof or within thirty days after the expiration of the same: Provided, however, that the lessor have a lien on all such buildings and improvements to secure the rent hereinabove provided for, and no such building shall be removed therefrom while the said rent or any part thereof remains due or unpaid; and if the lessee or his legal representatives shall at any time make default and shall be in arrears with the said rent or any part thereof, and shall neglect and refuse to pay for fifteen days at any one time, the lessor may enter upon the premises and
246 eject the lessee therefrom and repossess himself of the same without notice or other legal process.

And it is further agreed that the space of two feet running along and adjoining said lot from the east to the west end of same shall remain open for the special benefit of the said lessee and shall not be let to any other person during the continuance of this lease.

This lease shall not be assigned nor the premises underlet without the written consent of the lessor being first endorsed hereon.

In witness whereof the parties hereto have hereunto set their hands and seals at Hot Springs this 20th day of February, 1874.

WM. H. GAINES. [SEAL.]
PHILIP A. HELFRICH. [SEAL.]

247 This indenture, made this 12th day of January, 1874, between Wm. H. Gaines, of Garland county, Arkansas, of the first part, and Jonathan Brantley, of said county, of the second part, witnesseth:

That the said party of the first part, for and in consideration of the covenants agreed to be performed by the said party of the second part, has leased and let, and does by these presents lease and let, unto the said party of the second part a certain lot or parcel of land lying and being situate in the village of Hot Springs, in the county of Garland and State of Arkansas, and described as follows, to wit:

Commencing and running on the west side of the street, running north sixteen (16) feet, thence back west to the Sumpter fence; to have and to hold the same unto the said Jonathan Brantley for the term of one year from the date hereof; and the said Brantley, party of the second part, hereby covenants and agrees to pay to the said

Gaines, party of the first part, monthly, in advance, for the use of the above-named premises, the sum of thirteen and $\frac{33}{100}$ dollars, and in default of payment of the said rental, as hereinabove provided, to surrender the said premises to the said party of the first part on demand; and it is agreed that the buildings and improvements now situated on the premises, and which belong to the said Jonathan Brantley, may, at any time during this lease or within thirty days after the expiration of the same, be removed *removed* therefrom by the said Brantley, and the said Brantley agrees to deliver on demand the *de*nced lot lying south of and adjoining the lot described in this lease.

In testimony whereof the parties hereunto set their hands and seals this the day and year first above written.

WM. H. GAINES. [SEAL.]
J. BRANTLEY. [SEAL.]

248 HOT SPRINGS, ARKANSAS,
AND IN THE TOWN OF HOT SPRINGS.

This agreement, made and concluded this first day of October, eighteen hundred and seventy, between Wm. H. Gaines, party of the first part, and John Kubler, party of the second part, witnesseth:

That the said Wm. H. Gaines, for and in consideration of the terms hereinafter expressed, has rented or leased to the said John Kubler, for his use and benefit, all that portion or parcel of land situated in Hot Springs, Ark., described as follows:

Commencing ten feet front on, west side of street back, to Sumpter's fence, for the space and term of three years, or until the title to the Hot Springs quarter section is settled; said Kubler to have the privilege of erecting a house, and also have the privilege of removing such buildings as he may erect at the termination of lease; said lease not to be transferred without consent of Wm. H. Gaines, party of the first part. The said John Kubler, for himself, his heirs and assigns, agrees to pay to the said Wm. H. Gaines, his landlord, or his heirs and assigns, the sum *if* two hundred dollars ($200) a year; to be paid ev*a*ry quarter, in advance, the sum of fifty dollars ($50); rent to commence on the first day of October, in the year of our Lord eighteen hundred and seventy (1870).

WM. H. GAINES. [SEAL.]
JOHN KUBLER. [SEAL.]

249 This indenture, made this the 1st day of June, in the year of our Lord one thousand eight hundred and seventy-two, between Wm. H. Gaines, of Hot Springs county, Arkansas, party of the first part, and Green Payne, of the same county and State, party of the second part, witnesseth:

That for and in consideration of the covenants of the said party of the second part the said Wm. H. Gaines, party of the first part, has leased and let, and does by these presents lease and let, to the said Green Payne, party of the second part, a certain lot or parcel of land situate on the west side of *of* the princip*le* street in Hot Springs valley, in Hot Springs county, Arkansas, and described as

follows, viz: Bounded on the south by the alley running back along the north side of Kubler's boarding-house, on the east by the street, on the north by Mrs. Anderson's residence, and on the west by Sumpter's fence, making a front on the street of fifteen feet and running back the same width to Sumpter's fence; to have and to hold the same for the use and benefit of the party of the second part for a term of three years from the date hereof, or until the title to the Hot Springs quarter section is settled, with the privilege of erecting a building thereon and of removing the same within thirty days after the expiration of this lease, with the express understanding that the alley aforesaid running back between this lot and Kubler's shall be left open for the joint benefit of John Kubler and Green Payne; and in consideration of the foregoing premises the said Green ——, party of the second part, agrees to pay to the said party of the first part, a rental value of ($12.50) twelve dollars and fifty cents per month, to be paid monthly, in advance, and in default of payment of the same promptly in advance, as herein provided, to vacate and surrender the said premises on the demand of the said party of the first part; and it is further agreed that this lease shall not be transferred to a third party without the written consent of the party of the first part.

In witness whereof we have hereunto set our hands and seals this the day and year first above written.

WILLIAM H. GAINES. [L. S.]

his
GREEN x PAYNE. [L. S.]
mark.

Attest: A. CURL.

Wm. H. Gaines hereby consents to the assignment of the above lease to John and Afford Wakelin on condition that they assume all the liabilities of said lessee, Payne, and pay them up to the 1st of March, as herein stipulated.

WM. H. GAINES,
Per R. G. DAVIES, *Att'y.*

250 At the final hearing the following depositions were read:

GEORGE M. FRENCH, a witness on the part of the defendant, being produced and by me first duly sworn according to law, deposes as follows, to wit:

Question. State your name, age, place of residence, and occupation.

Answer. My name is George M. French, my age is forty-nine years, and I reside in Little Rock, Arkansas, and my occupation is civil engineer.

Question. State if at any time you prepared a map of the Hot Springs reservation or any portion thereof; and if only a portion, state what portion and how you came to do so and at whose instance.

Answer. In the year of 1875 I prepared a map of the entire Hot Springs reservation as said reservation at that time existed. I done

this at the direct request and instance of Stephen W. Dorsey, a member of the United States Senate for the State of Arkansas, and in payment for services for making said survey and map the citizens and claimant- on the reservation contributed the funds. A majority of those names of said citizens so contributing appear upon this map.

Question. Have you that map now? If so, state where it is, and can you produce it?

Answer. I have it; it is in my possession, at Hot Springs, and I can produce it.

Question. After you had completed the map, state into whose hands it was placed and what use was made of it, if you know.

Answer. After the map was made I placed it in the hands of Stephen W. Dorsey, as Senator of the United States, to be used, as he then stated to me, by the Land Committee of the United States Senate in formulating a bill or law for the settlement of the question of title by the claimants and squatters upon said reservation.

Question. State whether the map was used before the Sen-
251 ate of the United States during the passage of the act of March, 1877, and 1880—in whose possession it was.

Answer. Of my own knowledge I cannot state, but it was procured and compiled for that purpose, and, as I was informed by Senator Dorsey, it was in possession of the Senate Land Committee.

Question. At that time did the map show the names of persons who lived upon and claimed to own the houses shown on the map and the boundary lines of the respective claimants?

Answer. The map showed the boundary lines of all claimants upon the reservation, so far as those lines were designated or capable of being designated, by fence lines or other monuments upon the surface thereof; and the names of all such claimants were placed upon the map in numerical order, numbered from one on up with the corresponding number to that set opposite of the respectives names entered upon the claim, as shown upon the map, as belonged to such claimants.

Question. State if you know whether the map was used before the Senate Committee upon Public Lands; if so, state what you know about that.

Answer. My answer to this question will be the same as is answered in the fifth interrogatory.

Question. By whom was the map returned to you?

Answer. By Stephen W. Dorsey, United States Senator.

Question. State whether the Hot Springs Commission had access to the map; if so, to what extent; and if in fixing the boundary lines they were guided by your map in determining the boundary lines of claimants, state fully all you know in relation to the matter.

Answer. The Hot Springs Commission did have access to the map from the commencement of their adjudication of claims here until their labor was completed in this direction, and more than four-fifths of the plats of claims required to be filed by said com-

252 mission before them to determine the boundary lines of property claimed by the different claimants were taken from the survey as delineated by this map, and for compensation and consideration of use by the Hot Springs Commission of this map General Kelly, superintendent of the reservation, in whose charge the original field notes and working-plats used by the commission during their survey of the reservation from which the present survey and map of the Hot Springs as it now exists was produced was left, was instructed by said commission to give me free access to and use thereof.

Question. Will you attach a copy of the map in your deposition and mark it Exhibit "O" and make it a part of your deposition?

Answer. I will, on condition I am paid for the labor of makin- and producing the same, as has been agreed upon heretofore, namely, $50.

Question. What do you mean by the word claimants in your deposition?

Answer. I used the word claimants as persons having or owning the buildings and improvements upon each of said lots and who made claim for them and for title before the Hot Springs Commission.

Question. Is the map you referred to in this deposition the same you have filed a copy of in this deposition in the case of Wm. H. Gaines and Maria Gaines against Philip A. Helfrich, and marked Exhibit "O" therein, and agree it shall be read as part of your deposition in this case?

Answer. It is, and I make it a part of this deposition.

Here notary marks said — as Exhibit P and makes — a part hereof.

GEORGE M. FRENCH.

Here the further taking of these depositions is suspended until to-morrow morning, the 19th day of January, 1886.

J. H. SCROGGINS,
Notary Public.

Here the further taking of these depositions is resumed this January 19th, 1886.

J. H. SCROGGINS,
Notary Public.

253 W. P. WALSH, a witness on the part of the defendant, produced and being by me first duly sworn according to law, deposes as follows, to wit:

Question. State your name, age, residence, and occupation.

Answer. My name is William P. Walsh; reside in the city of Hot Springs, Arkansas; my age is forty years; at present mayor of Hot Springs, and in the year of 1875 was postmaster at Hot Springs, Arkansas.

Question. State if you at any time, with other citizens on the Hot Springs reservation, in the State of Arkansas, got up a petition of

citizens to present to the Congress of the United States to pass a law allowing said citizens and petitioners to acquire title to their claims on said reservation.

Answer. Yes; in the year 1875 I made a contract with Geo. M. French and E. A. Douglas, as surveyors and civil engineers, to make a survey and map of Hot Springs reservation, giving the topography of the same, showing by metes and bounds, as nearly as may be, the land occupied on said reservation by squatters, claimants, and occupants, who had improvements on it.

Question. State if said petition was placed before Congress and the map you refer to or their land committee.

Answer. The petition referred to above was signed by at least eight hundred persons, not including the three old claimants. Most of these petitioners who signed the petition were personally known to me as *bona fide* settlers on said reservation. My reason of acquiring of said knowledge was that I was postmaster at the time said petition was signed. The said petitioners asked Congress to pass some law granting them severally the right to purchase the lots or parcels of ground upon which they had made improvements and to settle the vexed question of title. The petition referred to herein was sent to the Senate Committee on Public Lands, at Washington, together with the map as compiled by said French and Douglas.

254 Senator Dorsey and other members of the Arkansas delegation then in Congress suggested the making of said map to show that there were more than three persons who claimed property on the Hot Springs reservation, and the map was paid for by the petitioners in proportion to their claims. I know said petitions and map reached Washington and was presented before the committee in both houses on public lands. I received letters in regard to it and talked with members of the Arkansas delegation, and was there myself, at the request of the citizens and petitioners and occupants, and talked to the Senate Committee on Public Lands; also House committee and Secretary of the Interior, and remained there as representative of said petitioners until the bill of March 3rd, 1877, passed and became a law.

Question. Were there any further petitions after the one you first refer- to prepared and sent to Congress asking for further legislation? If so, state what it was.

Answer. Yes; on the 12th day of January, 1880, a petition was prepared, a copy of which I have attached and made it Exhibit "P," and attached to the deposition in the case of Wm. H. Gaines and Maria Gaines against Phillip A. Helfrich, and which Exhibit I make a part of this deposition. This petition was sent to Congress, or the original copy thereof—to Jordan C. Cravans, a member of Congress, and was printed by order of the Senate committee on public lands. Joseph McDonald, of Indiana, was presiding when the order was made. I presented the petition to the committee and represented the petitioners before said committees, and the result was that the prayer of the petitioners was gra-ted by the passage of the act of Congress approved June the 16th, 1880, known as the act for the establishment of titles in Hot Springs and other purposes.

By examination of the petitisn of January 12th, 1880, it shows that it was signed by the heirs of some of the three old claimants, to wit, A. S. Woodcock, claim No. 98, husband of Loretta Hale; Samuel H. Stitt, son-in-law of W. H. Gaines, claim No. 540; also
255 880 and various other claims; Albert Belding, one of the old Belding heirs and brother-in-law of W. H. Gaines; Loretta Hale, one of the Hale claimants, No. 606 and 790; Augusta L. Stitt, daughter of W. H. Gaines, claim No. 670 and 671; also Fanny G. Williamson, daughter of W. H. Gaines, claim No. 643; C. S. Williamson, son-in-law of W. H. Gaines, claim No. 640 and 672, and A. B. Gaines, son of W. H. Gaines, claim No. 640, 801, and 803; George Belding, claim No. 386.

These parties who signed this petition protested against the reopening of the Hot Springs cases, and desired the decision of the Hot Springs Commission to stand as is shown by said petition so signed.

The signatures of said petitioners was acknowledged by G. W. Baxter, a notary public, as can be seen by reference to page 12 of said petition; a copy of which petition is attached to my deposition in the case of Wm. H. Gaines and Maria Gaines against Philip A. Helfrich, and marked as Exhibit "Q," and I refer to it and I make it a part of my deposition in this case.

Question. State, if you know, whether there was any parties in Washington, when you represented the petitioners in 1880, representing William H. Gaines to have the awards of the commission to stand as made. If so, state who they were.

Answer. Yes; I know that W. W. Wilshire and Gen. Denver, of Washington, D. C., were employed by Albert Gaines, a son of W. H. Gaines, to appear before the respective Committees on Public Lands of the Senate and House to prevent the opening of the Hot Springs question through any legislation. I was allowed an hour to address the House committee for the petitioners. I divided my time by giving Wilshire and Denver one-half of it, as they were cooperating with me and in the interest of the petitioners. Those gentlemen also appeared before the Senate Committee on Public Lands and urged that the awards and adjudications as made by the commission be not disturbed.

W. P. WALSH.

256 Here the attorney for the plaintiffs objected to all the foregoing testimony as irrelevant and incompetent.

(Endorsed:) Opened and published by order of court January 26th, 1886. Ralph L. Goodrich, clerk, by W. P. Feild, D. C.

The Deposition of Dr. Geo. H. Smith.

Dr. GEO. H. SMITH, a witness, being produced and by me first dsly sworn according to law in his own behalf, deposes and testifies as follows, to wit:

Question. State your name, age, and residence.

Answer. My name is Geo. H. Smith; my age, forty-five years; and my residence is Hot Springs, Arkansas.

Question. Are you one of the defendants in this action?

Answer. I am.

Question. At what time did you purchase from the Kublers the lot in controversy?

Answer. September the 12th, 1876.

Question. At the time of said purchase had the Supreme Court of the United States rendered its decision declaring that neither Gaines, Rector, or Hale had title to the Hot Springs quarter section?

Answer. Yes; the court had so decided.

Question. At the time you had purchased from the Kublers, state, if you know, whether the Kublers had attorney to the United States and recognized it as their landlord.

Answer. Yes; when I purchased the said improvements Mr. John Kubler was renting twenty feet front of said property. Godfry Kubler was renting ten feet front from the United States re-
257 ceiver. Before I purchased from the Kublers I made inquiry from the United States receiver if he would transfer to me the lease of said property; he said he would if the rent was paid up to date. Before the completion of the purchase the Kublers and myself went to the receiver and made settlement until the 1st day of October, 1876, for rent.

Question. At the time of making the purchase from the Kublers had the Congress of the United States passed any act looking to a disposition of the Hot Springs quarter section?

Answer. No; they had not.

Question. After you purchased from the Kublers, state whether or not you recognized the United States as your landlord; if so, in what manner.

Answer. Yes; I did recognize the United States as my landlord by taking out a lease for said property for one year, I think, and paying the rent on it.

Question. Did you go into the possession of the property you purchased from the Kublers under the lease between Kubler and Gaines?

Answer. No; I did not.

Question. Did you see or know of the Kubler lease with Gaines when you purchased?

Answer. I never saw the Kubler lease before I purchased. It was not a question or thought of at that time, as the Supreme Court had decided the property belonged to the United States and that all former leases had ceased to exist.

Question. State if you ever saw the lease between Kubler and Gaines; if so, when.

Answer. I saw a lease which was filed by the plaintiff before the Hot Springs Commission purporting to be a lease between Gaines and Kubler.

Question. Is it not provided in said lease it should be for the term of three years or until the title to the Hot Springs quarter section is settled?

258 Answer. Yes; I believe it is so provided.

Question. At the time you went into the possession of the property in dispute did Gaines or the Belding heirs claim to own or have an interest in the property in controversy?

Answer. No; they did not.

Question. Had the Belding heirs or the plaintiffs ever at any time before the commencement of this suit claimed to own the property in controversy or demanded rent of you for the same?

Answer. No; they did not then claim the property nor demand of me rent of any kind. I believe they made claim before the commission for all the quarter section, or a considerable portion thereof, but no special claim for the lot in controversy, based upon the ground that they were entitled to the same by reason of improvements made thereon. Outside of this, I have never heard of any claim being made by them.

Question. Who has paid the tax on the property since April the 4th, 1876?

Answer. I have paid all the taxes assessed against the said property.

Question. Are the buildings now on the said lot the same as those — when you purchased from Kubler? If not, state what became of those erected by the Kublers.

Answer. They were all destroyed by fire, I think, on March 5th, 1878, and after their destruction by the fire I erected the present improvements or buildings.

Question. By what authority did you rebuild?

Answer. I erected the present buildings by permission of the United States commissioners.

Question. When did you rebuild and was the plaintiff Gaines in the city of Hot Springs?

Answer. Yes, sir; I believe he was. I believe he passed
259 the house almost daily while I was rebuilding.

Question. What, if anything, did Gaines say to you about rebuilding?

Answer. He never said a word to me about it or made any objection against my rebuilding.

Question. Is lot No. two, in block seventy-seven, as it is now known on the plats, composed entirely of the land which you purchased from the Kublers and described in the lease between John Kubler and Gaines; if not, where does it differ?

Answer. No, the land is not identical. The present lot is 32 & $\frac{2}{10}$ front and 90 feet deep. The lease filed before the commissioners calls for 20 feet front and back to the Sumpter *pence*; for the other 12 feet front and back to the Sumpter fence there was no lease at all.

Question. How much of the land leased by John Kubler from Gaines is now in the lot in controversy?

Answer. Twenty feet front and back to where the Sumpter fence was when the lease was made.

Question. How much of the lot in controversy is west of where the Sumpter fence was?

Answer. To the best of my knowledge and from information received, there is about sixty feet in depth and about 32 & $\frac{2}{10}$ feet in width.

Question. What did the improvements on said lot cost you, as they now stand, as well as those which were destroyed by fire?

Answer. The first ones on the lot which were destroyed by fire cost about $1,000, and the present improvements on the lot cost about $2,500.

Question. Who has been in the actual possession of said lot since October 1st, 1876, down to the present time?

Answer. I have been in possession of the lot constantly since that up to the present time.

Question. Has that possession been open, notorious, continuous, and adverse to the plaintiffs, the Belding heirs, and the rest of mankind?

260 Answer. Yes; it has.

Question. Has the plaintiff, at any time within seven years prior to the 23rd day of May, 1884, commenced any suit at law or in equity against you to obtain possession or obtain title to the lot in controversy?

Answer. No, sir; they have not.

No cross-examination.

G. H. SMITH.

JOHN J. SUMPTER, a witness on the part of the defendant, being produced and by me duly sworn according to law, deposes and says, to wit:

Question. State your name, age, and residence.

Answer. My name is John J. Sumpter; my age is forty-three years, and residence is Hot Springs, Arkansas, and have resided there since 1844.

Question. Are you acquainted with the lot of land now known as No. two, in block No. 77, in Hot Springs, Arkansas?

Answer. Yes, sir; I know it.

Question. Do you know where the line of the Sumpter fence was in the year of 1874?

Answer. I think I do know where the location was. I helped to rebuild it in 1870 and 1874, and kept it up all the time.

Question. Do you know the present depth of said lot? If so, state it.

Answer. I know; and it is ninety feet.

Question. How much of said lot now lies west of where the Sumpter fence was when you had it rebuilt?

Answer. There is 55 or 60 feet depth by 32 feet in width.

261 Question. Has the plaintiff ever at any time since 1845 possessed, improved, or occupied any portion of that portion of lot two, lying west of the Sumpter dence?

Answer. He did not, and if he had I would have known it.

Question. Who was in possession of that portion of said lot from

1845 down to the time when the receiver took possession for the United States, and how long has that possession continued?

Answer. From my earliest recollection my father was in possession until his death in September, 1861; my mother then continued in possession until July, 1864, when the building was destroyed by fire, and she then went to Arkadelphia, Arkansas, and remained there until the fall of the year 1865, when she, together with myself and brother, returned and went onto the property; it was vacant when we returned, and we continued in possession until the receiver took possession. After the receiver took possession we applied to him to rent the same, and we paid him five months' rent on it, during all of which time and up to the time of the award of the commission I know, as a matter of fact, Gaines did not apply to rent any portion of that property and did not claim it.

Question. Was that possession open, notorious, and adverse to the Belding heirs?

Answer. It was.

Question. State whether, at any time after the award by the commissioners, you had any conversation or conver-ations with Gaines, the plaintiff, in relation to the awards made by it; and, if so, what he said.

Answer. He expressed himself as satisfied with the awards and was opposed to having them interfered with.

Question. Did you make any attempt to induce Congress to pass a law to designate a tribunal to supervise the action of the commission in making its awards on the application of parties dissatisfied with the awards? If so, state if you know whether Gaines, the plaintiff, favored or was opposed to the passage of such

262 an act.

Answer. I went to Washington to induce Congress to pass such an act. A bill was prepared providing that certiorari might be had from the commission to the Court of Claims, and that persons dissatisfied could avail themselver of that remedy. The bill passed the House and went to the Senate, where the provision proveding for certiorari was stricken out, and the rest of the bill, my impression is, passed the Senate and the House concurred in the bill as passed by the Senate. I know that Albert Gaines was there at Washington as the agent of the plaintiff and approved the passage of the act in so far as it provided a remedy by certiorari, and I also know that Judge Willshire was employed by said Gaines to prevent Congress from passing the bill with the certiorari provision in it. My impression is that I had a conversation with the plaintiff before I went to Washington, and that he tried to dissuade me from making any effort to disturb the awards made by the Hot Springs Commission.

No cross-examination.

JOHN J. SUMPTER.

WILLIAM H. GAINES, a witness produced and by me duly sworn according to law on the part of the defendant, deposes as follows, to wit:

Question. State your name, age, and residence.

Answer. My name is William H. Gaines; my age is eighty-eight years, and my residence is Hot Springs, Arkansas.

Question. Are you the plaintiff in this action?

Answer. I am.

Question. Did you at any time execute a lease to John Kubler for a piece of land, a portion of which is now known as lot
263 two, in block seventy-seven, in Hot Springs?

Answer. Yes; I leased a lot to him.

Question. Do you recollect the dimensions of the lot you leased to him?

Answer. I think I gave him two leases, the first one twenty feet, and afterwards I leased him another, ten or twelve feet, I think. I am not positive of the depth, but I think it was back to the Sumpter fence. It was to go to the Sumpter line.

Question. At the time of making the lease to Kubler to the lot in controversy did you not know that the judgment which you had obtained in the action of ejectment against Hale and others had been set aside and held for naught by the supreme court of Arkansas?

Answer. If the decision was made before I made the lease I knew it, but I considered it was not for naught, but that it gave me right against all individuals.

Question. At the time of making the lease between yourself and Kubler for the lot in controversy did you not know that you had instituted a suit in the Court of Claims against the United States for the purpose of settling the question of title to the Hot Springs quarter section between the Belding heirs and the United States, and that the question was then undecided?

Answer. I think the suit was commenced before the execution of the lease.

Question. Knowing of this litigation, and that the title was in dispute and might be determined before the time fixed in the lease between yourself and Kubler would expire, what was your understanding if the court should finally decide against your claim, and what affect was such decision, if any, to have in terminating the lease?

Answer. My lease showed to all parties on its face that it was to determine when the title was settled, and there was no further understanding.

Question. What, if anything, did you say to your tenants
264 as to claiming rent after the title was settled?

Answer. I claimed the rent up to the decree of the Supreme Court of the United States, and no further.

Question. Did you claim rent of Kubler up to the time of the decision of the Supreme Court of the United States, or only up to the time of the decision of the Court of Claims?

Answer. I claimed rent up to the decree of the Supreme Court of the United States, which was April the 24th, 1876.

Question. Why did you not claim rent up to the time the decision awarded the lot to Kubler?

Answer. My contract was different and the property was in the hands of the Government.

Question. When the receiver came and took possession of the Hot Springs quarter section did you pay or offer to pay to him the rent which was demanded by him for the Kubler property?

Answer. He did not demand it of me and I did not offer to pay it.

Question. State, if you know, whether the improvements which Kubler placed on the lot prior to the decision of the Supreme Court of the United States were destroyed by fire. If so, when?

Answer. Yes; the buildings were all destroyed March 5th, 1878.

Question. At that time did you not know that the defendant, Dr. Geo. H. Smith, was prosecuting a claim before the Hot Springs Commission for said lot?

Answer. I do not know whether it was Smith or Kubler who was prosecuting the claim for the lot or not; the papers will show.

Question. Were you in Hot Springs during the year- 1878 and 1879?

Answer. I was.

Question. Did you not almost daily during those years pass the lot which you had leased to Kubler?

Answer. I passed it very frequently. There may have
265 been four or five days at different times during bad weather when I did not. When it was pleasant I generally passed it.

Question. In thus passing and repassing after the fire did you not notice that a new building was being put on the lot?

Answer. There was no lot laid off that a person could tell where they were, but they were generally rebuilding.

Question. Did not you claim nearly all the ground before the commission which was included in the burnt district?

Answer. I filed a claim before the commission for the south half of the quarter section in bulk, which south half covered all the ground I had in possession when I was enjoined. I think that two-thirds of the burnt district was in the south half of the quarter section, and lot No. two was in it.

Question. What, if anything, did you say to Kubler or Smith about building on the lot after the fire?

Answer. I never said a word to any of them, to my recollection.

Question. When you saw that some one was rebuilding on the property which you claimed, why did you not admonish them they were building on your property?

Answer. From the simple fact that Judge Caldwell had sustained the leases of the receiver. I felt very bad when I saw them building houses on property on which I had built houses, but I did not say anything to any one about it.

Question. Had you ever built a house on the ground which you leased to Kubler?

Answer. I had not. I had houses at an early day on both sides

of the street which I had showed before the commissioners, but I do not know that there was on the lot which I had leased to Kubler.

266 Question. Did you feel bad when you saw a new house going up on the Kubler lot?

Answer. I can't say that I ever thought of it—only where I had built houses myself.

Question. Did you not know before the appointment of the Hot Springs Commission that Kubler had been compelled to attorn to and recognize the United States as his landlord?

Answer. I did not know who took leases, but most all of them did.

Question. If you had not at that time abandoned all claim to that property why did you not pay rent to the receiver upon it?

Answer. Because he would not let me pay on my own houses, except the one I lived in, and I never abandoned it, but felt safe in the hands of the Government and thought all the time they would pass some law that would give it to me.

Question. Did you apply to the receiver for permission to pay rent upon the property in controversy and did he refuse to allow you to pay rent on the same?

Answer. I did not, owing to his showing me that all the tenants should have the preference. I applied for a number of outbuildings which I had built myself, but he refused me any except the house I lived in.

Question. From the 24th day of April, 1876, down to the present time, as a matter of fact, who has been in possession and occupancy of the lot in controversy?

Answer. Mr. Kubler and Mr. Smith have been in possession of it all the time.

Question. Have you or the Belding heirs at any time within a period of seven years since the dicision of the Supreme Court of the United States against the claim of the Belding heirs and since Kubler and Smith were compelled to attorn to the United States instituted an action at law to obtain the possession of said lot, or an action in equity within seven years from that date to have them or

267 either of them declared a trustee in their behalf or vest title in them—that is, the Belding heirs?

Here the further taking of these depositions is suspended until to-morrow morning at ten o'clock, this December 10th, 1885.

J. H. SCROGGINS,
Notary Public.

Here the taking of the depositions is resumed this 11th day of December, 1885.

J. H. SCROGGINS,
Notary Public.

Continuation of WM. H. GAINES' testimony:

Answer to above question. My claim has been prosecuted before the commission up to the time of its close.

Question. Why do you refuse to answer the question put to you, as to whether you commenced action at law or in equity against Kubler or Smith within seven years from the date of the decision of the Supreme Court of the United States against the claim of the Belding heirs?

Answer. I brought no suit, but went on and prosecuted my claim before the Hot Springs Commission, where I thought I had a right to.

Question. After the Hot Springs Commission had decided against you, why did you not bring an action at law or in equity against Kubler or Smith for the property?

Answer. Because there was other suits brought by Rector and taken to the Supreme Court of the United States, and I awaited the action of the Supreme Court of the United States.

Question. Do you refer in the preceding answer to the case of Rector against Gibbons and others?

Answer. Yes.

Question. Was not Rector claiming the property by reason of having made improvements upon the lot prior to the time it was leased by him to Gibbons?

Answer. I do not know anything about how the case was made out, and don't know anything about it. I don't know who built there first or last.

268 Question. If you know nothing about the grounds upon which the Rector suit was based, why did you wait on the action of the Supreme Court in this case?

Answer. I just supposed it was a similar case to mine, and do not know how the case was prepared, and if it had been held up I should not have sued. When it was decided I thought that it in effect held that the tenants held in trust the title for me; then I commenced suit.

Question. After the award of the Hot Springs Commission, have you not frequently expressed yourself satisfied with the awards made by them?

Answer. I don't recollect. I have frequently expressed that I did not think any three men could have come here and satisfied as many people. They satisfied about one hundred tenants who would — been very clamorous.

Question. When Sumpter was trying to procure legislation on the part of Congress looking to the issuing of the awards made by the commission did you not contribute money to pay the expenses of persons to Washington to defeat such legislation?

Answer. I did not know what Sumpter was at. I got a pamphlet in which he charged me with a good deal of fraud. I employed a lawyer to defend my character, and stated that they did satisfy more people than any other three men ever would again. I paid him two thousand dollars.

Question. You say you employed a lawyer to defend your char-

acter and paid him two thousand dollars. State the name of the lawyer and before what tribunal he was engaged in defending your character.

Answer. My understanding was there was charges before the Interior Department directly against me and my character; and I had other business before Congress—watching the reduction of the appraisements of the lots as made by the commissioners, and
269 looking after my interest generally—and my lawyer's name was W. W. Wilshire.

Question. In this action are you claiming rent from Kubler down to the date of the decision of the Court of Claims or down to the date of the decision of the Supreme Court of the United States?

Answer. I claim rent up to the decision of the Supreme Court, and if the court decides in my favor I shall claim all the court will allow me.

Question. After the decision of the Court of Claims did not Kubler claim that the lease was at an end and refused to pay rent?

Answer. He never refused to pay at any time—only that he was unable; but he refused to give me a note when I called on him to settle after the decision of the Supreme Court.

Question. Have you at any time brought suit against Kubler for the rent which you now claim to be due?

Answer. I never have, believing he was not able to pay anything.

Question. If he was not able to pay anything, why did you want his note?

Answer. I wanted it to show what he owed me, and the closing of account once in a while by note.

Question. Why did you not enforce against him the lien against the improvements he had made on the lot, as alleged in your bill?

Answer. Because I thought he was too poor and not able to live and pay it.

Question. If you thought he was too poor to pay it, why do you seek to enforce it now?

Answer. I don't understand why the declaration is in that shape. I gave up all those rents long ago.

Question. How long has R. G. Davies, Esq., been your attorney?

Answer. I do not recollect. He was my attorney from some time in 1874 up to 1877, and then from the early part of 1880 up to the present time.

Question. It is real true that yourself, family, and the Belding heirs were awarded by the Hot Springs commissioners over one hundred lots?

270 Answer. I have no idea how many lots. I never counted them. I have no idea there are as many as one hundred. I think it is under one hundred. There were no awards to the Belding heirs. They did not file any claim, and all their claims were transferred to Wm. and Maria Gaines.

No cross-examination.

WM. H. GAINES.

Here the further taking of these depositions is suspended until to-morrow morning at nine o'clock, this December 11th, 1885.

J. H. SCROGGINS,
Notary Public.

DECEMBER 12TH.

Here the taking of these depositions is resumed.

J. H. SCROGGINS,
Notary Public.

WILLIAM SUMPTER, a witness on the part of the defendant, being produced and by me duly sworn according to law, deposes and says, to wit:

Question. State your name, age, and residence.

Answer. My name is William Sumpter; reside in city of Hot Springs, Arkansas, and my age is forty-five years.

Question. State if you had a conversation with the plaintiff shortly after the decision of the Supreme Court of the United States, in which it was held that the title to the Hot Springs quarter section was in the United States, and before the appointment of the Hot Springs Commission; if so, state who was present and what was said by Wm. H. Gaines.

Answer. I had a conversation with him during the time alluded to and he said: The courts have decided against me and I no
271 longer make any claim to the land claimed by your family.

Question. After the appointment of the commission did Gaines claim the land which your family had theretofore claimed?

Answer. Yes; and filed a claim for it.

Question. After the award by the commission to your family did you have a conversation with Gaines in relation to the awards? If so, state what he said at any time.

Answer. Some time after the awards there were three or four of us present talking of the awards as made by the commission, at which Gaines was present. I was complaining that great injustice had been done us, and Gaines said he was satisfied with the action of the commission and for one was willing to abide by it. I do not recollect—I do not recollect the names of the other parties who were present. I did not charge my mind with the recollection of the names of the other persons, because I thought the thing was settled for all time, and that we would have to abide by it.

No cross-examination.

WM. SUMPTER.

JAMES A. SMITH, a witness produced, and by me first duly sworn according to law, on the part of the defendant, deposes as follows, to wit:

Question. State your name, age, and residence.

Answer. My name is James A. Smith; my age is thirty-nine years, and residence, Hot Springs, Arkansas.

Question. State if at any time—if so, when—after the Hot Springs

commission had made its awards you had any conversation or conversations with William H. Gaines, the plaintiff, about purchasing property in Hot Springs; and, if so, what he stated or advised in relation thereto.

272 Answer. I had sold Mr. Gaines a piece of property in the country some time in the year 1881, I think. When I was about to deliver the deed our conversation —ed upon the subject of money. He said to me that the title to the Hot Springs property was now settled; that he thought Hot Springs would be quite a place, and that he thought the price of real estate would advance, and advised me to purchase property in Hot Springs, if I could, at the earliest day it was possible.

Question. Upon the faith you had as to the title being settled, as stated by Mr. Gaines, did you purchase any property in Hot Springs? If so, state the number of the lot and block.

Answer. Yes; I did afterwards purchase some property, to wit, lots 8 and 9, in block 77; lot 8 adjoins the property of Philit Helfrich.

Question. State, if you know, whether the property which you purchased, as above stated, was claimed by Gaines before the Hot Springs Commission and awarded to some one else?

Answer. I do not know whether he claimed it or not.

Question. When you made the purchase alluded to, did you have any conversation with Gaines about the same? If so, state what he said.

Answer. I do not recollect that I had any conversation with old man Gaines, but I did have a conversation with Albert Gaines, and he offered to assist me with building—means to build a brick house on the property. Albert Gaines is a son of Wm. H. Gaines.

Question. After you purchased, state whether or not Gaines commenced suit against you to recover said lots 8 and 9, in block 77.

Answer. He did.

No cross-examination.

J. A. SMITH.

273 *Deposition of* S. W. VAUGHN, a witness on the part of the defendant, produced and being first by me duly sworn according to law, deposes as follows, to wit:

Question. State your name, age, and residence.

Question. My name is S. W. Vaughn; reside in Hot Springs, Arkansas, and my age, forty years.

Question. State if at any time you had a conversation or conversations with Gaines, the plaintiff, about the awards made by the Hot Springs Commission, in which he expressed himself either satisfied or dissatisfied with said awards, and whether he expressed himself as being in favor of or opposed to disturbing said awards; if so, state what he said.

Answer. At one time Major Conger, Father Garhaty, the plaintiff, and myself were coming from Sulpher Springs to Hot Springs, and on the road over our conversation turned upon the value of prop-

erty at Hot Springs. Mr. Gaines said that if the awards as made by the commission were not disturbed, that he thought the property would appreciate; but if the awards should be opened or appealed from it would result in litigation and in depreciation of the property. Prior to this conversation an effort had been made by parties to have the awards appealed from, and he depreciated such a course. I thought I had been injured or rather deprived by the commission of property which they ought to have awarded to me, and I asked Mr. Gaines if he was in favor of the Government or any one else denying its citizens the right of an appeal. He said it was better as it was and was in favor of having matters remain as finally awarded by the commission. I was surprised at this position, and we had some pretty hot words over the matter, and Father Garhaty chided me for being so impetuous.

No cross-examination.

S. W. VAUGHN.

274 Mrs. M. J. WORLEY, a witness for the defendant, produced, and by me first duly sworn according to law, deposes and says, to wit:

Question. State your name, age, and residence.

Answer. My name is M. J. Worley; reside in Hot Springs, Arkansas, and am of lawful age.

Question. State if at any time since the Hot Springs Commission made its awards you had a conversation or conversations with the plaintiff Gaines; and, if so, state what he said.

Answer. Some time in December, 1880, I met Mr. Gaines at Mr. Wilson's office, in Hot Springs. I was then contemplating buying a piece of property on which the American house stands, and I asked Mr. Gaines what he thought of the property and the propriety of my making the purchase, and he said it was good property—no better, madam—and he advised me to buy, I not knowing at that time Mr. Gaines had ever claimed the property. I simply spoke to him about the purchase because he had lived here a long time, and for that reason thought his judgment on the subject would be worth listening to, and during the early part of 1881 I purchased the property I was talking to Mr. Gaines about, and paid about six thousand dollars or thereabouts in cash. When I was talking to Mr. Gaines about purchasing that property he never mentioned to me that he had any interest in it or claimed to have any interest in it.

Question. Did he afterwards bring suit against you for it?

Answer. Yes, sir; he did.

No cross-examination.

MRS. M. J. WORLEY.

Testimony of John J. Sumpter (Copied).

275 JOHN J. SUMPTER, being duly sworn, deposes and follows:

I have resided on the Hot Springs reservation since 1884. I was born in July, 1842. I was and have been ever since well acquainted

with the ground on the west side of where Central avenue now runs, extending south on said avenue from the lot which was awarded to A. S. Garnett and known as the old court-house, in block 77, up to the lot claimed by Schickler and south on said avenue to the lot claimed by James Madison and Westley Steel. I suppose that the west side of Central avenue is twenty feet, more or less, further west now, as laid off by the Hot Springs Commission, that it was before, and that much nearer to the east line of what was known as the Sumpter claim near the south end of said claim.

Q. How much of said Sumpter claim is embraced in the lot laid off on the west side of Central avenue between the points mentioned as now platted—that is, in depth or measurement east and west—and how much of the claim of plaintiffs outside of said Sumpter claim in depth is embraced in said lot on the west side of said avenue?

A. The commission put into said lots, from land on Sumpter's claim, from thirty feet to seventy feet in depth. The east line or boundary of the Sumpter claim was not exactly parallel with said avenue. It made a curve where the avenue was comparatively straight. There was more taken from the Sumpter claim about the middle of the district. There was about twenty feet taken off of the Sumpter claim to add to the Schickler lot. There might have been a little more. I know that I leased him a part of said lot once—or himself or his wife, I don't know which. They kept a bakery and under said lease built a bake-oven on my ground. I think that a part of the Toole improvements on the lot claimed by Major Gaines were on my ground. The eastern boundary line of the Sumpter claim was fenced in as an improvement of the Sumpters. In widening the avenue the occupants of the buildings on the west side thereof were compelled to move their buildings back or westward. There was but little level land between the west side of said avenue and the hill after it was widened, and to make
276 space for their buildings had to excavate into the hill. The formation of the hill was rock; that it had to be blasted in some places to a depth of about thirty feet vertically in the hillside; such improvements were necessary and very expensive. The houses of the occupants were required to be raised several feet to a grade established by the commission. Major Gaines has talked with me about the awards of the commission on several occasions, and always expressed himself satisfied with the awards until some time not long ago—that is, until some time after the decision. I don't know how long it was. I know that when I was trying to open the awards that Major Gaines and all the old claimants were fighting me. Albert Gaines, the son of Major Gaines and trustee of all the Gaines property, was in Washington city opposing my efforts to get a bill passed to grant the right of appeal from the decision and awards of the Hot Springs Commission. That was in 1880—the first part of the year. Geo. W. Baxter was there also and opposed my efforts, and I don't know whether he was Major Gaines' agent or not. W. P. Walsh was there also opposing my efforts. I was deputy sheriff and deputy collector for Garland county from the time it was formed,

1874, when I was elected sheriff and collector. Generally, during the time I was such sheriff and collector, the realty in this reservation was not assessed for taxation, but only the improvements on the land was so assessed. Major Gaines *m*ave in his land on the reservation that he claimed for taxation, but gave it in at much less value than the value of the improvements. Since the award of the Hot Springs Commission he has brought suit against the county of Garland and Hot Springs county also to recover back the taxes so voluntarily paid by him on such assessments. I do not know what the result of such suits have been. He gave said land in, I think, in the name of the Belding heirs.

(Signed) JOHN J. SUMPTER.

277 DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *July 25th*, 1884.

I, L. Harrison, acting Commissioner of the General Land Office, do hereby certify that the annexed copies *od* petition No. 362 before the Hot Springs Commission, testimony submitted in support of same, and finding of the commission are true and literal exemplifications from the original on file and on record in this office.

In witness whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

L. HARRISON,
[SEAL.] *Acting Commissioner of General Land Office.*

UNITED STATES OF AMERICA:

Hot Springs Commission.

HOT SPRINGS, ARK., *June 18th, A. D.* 1877.

In the Matter of the Claim of GEORGE H. SMITH.

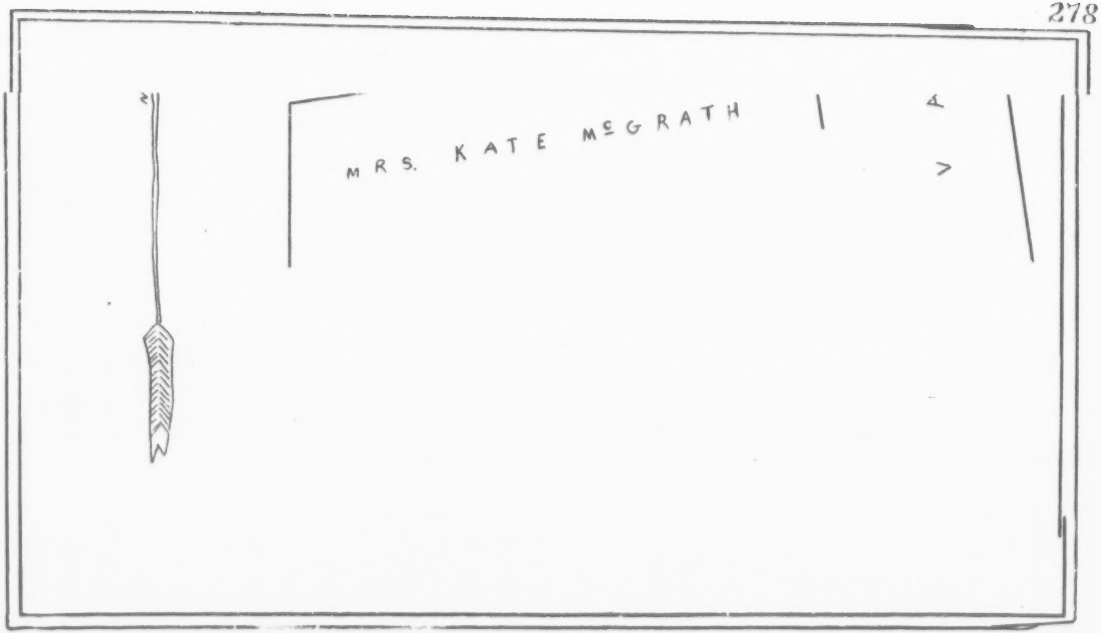
To the Hot Springs commissioners:

The petitioner, Geo. H. Smith, now residing at Hot Springs, Garland county, in the State of Arkansas, represents that he claims the following-described tract of land, a map of which is filed herewith and made a part hereof—

(Here follows diagram marked p. 278.)

situated in the Hot Springs reservation, which tract is bounded as follows, to wit: On the north by an alley, with a line running south 81° W. 100 feet; on the west by Sumpter's claim, with a line running south 9° E. 31 feet; on the south by an alley, with a line
279 *h*unning N. 81° E. 100 feet; on the east side by Valley street, with a line running N. 9° W. 31 feet to the place of commencement, lying and being in the southwest ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W.

That the following-described improvements are situated thereon, to wit, a two-story frame storehouse 29½ x 40 feet.


MRS. KATE McGRATH

1874, when I was elected sheriff and collector. Generally, during the time I was such sheriff and collector, the realty in this reservation was not assessed for taxation, but only the improvements on the land was so assessed. Major Gaines *m*ave in his land on the reservation that he claimed for taxation, but gave it in at much less value than the value of the improvements. Since the award of the Hot Springs Commission he has brought suit against the county of Garland and Hot Springs county also to recover back the taxes so voluntarily paid by him on such assessments. I do not know what the result of such suits have been. He gave said land in, I think, in the name of the Belding heirs.

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L. HARRISON,
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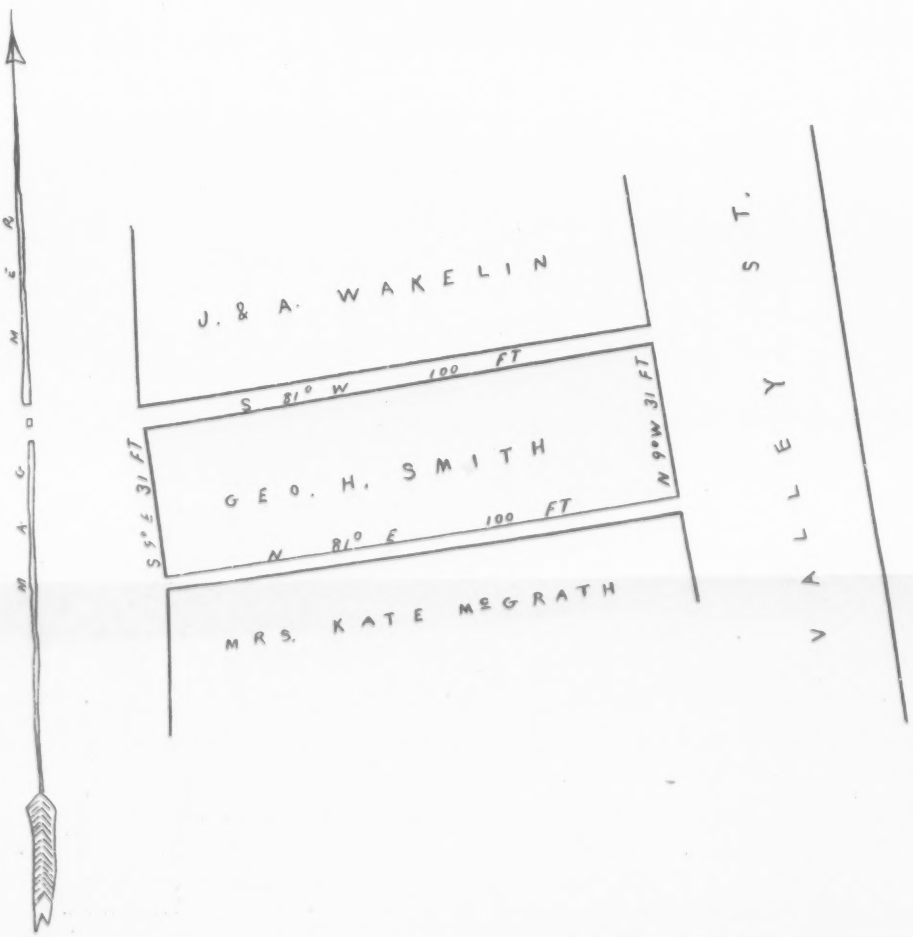
279 *h*unning N. 81° E. 100 feet; on the east side by Valley street, with a line running N. 9° W. 31 feet to the place of commencement, lying and being in the southwest ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W.

That the following-described improvements are situated thereon, to wit, a two-story frame storehouse 29½ x 40 feet.

Geo. H. Smith's

CLAIM

No. 302.
George N. Smith
v.
Mrs. P. Gaines et al
} p 278



That they were erected by John Kupler in the month of ——, in the year 1870; that they are of the value of fifteen hundred dollars.

The petitioner further says that he claims to be the owner of the said premises and entitled to purchase the same from the United States upon the following grounds, to wit: That he purchased the above-described premises from John Kubler and his wife, as will appear from a quitclaim deed, a copy of which is hereto attached; that he has had peac-able possession of said premises ever since he purchased the same, and that he knows of no other claimants for any portion of said lot.

This indenture, made and entered into by and between John Kubler and Christina Kubler, his wife, and Godfrey Kubler and Louisa Kubler, *hou* wife, all of Garland county, State of Arkansas, parties of the first part, and Dr. G. H. Smith, of same county and State, party of second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of four hundred dollars ($400) to them in hand paid by the said party of the second part, the receipt of which is hereby acknowledged, have pargained, sold, conveyed, released, remised, and quitclaimed, and by these presents do bargain, sell, convey, release, remise, and quitclaim, unto the said party of the second part and to *her* heirs and assigns forever all their right, title, and interest, as well in expectancy as in possession, in and to that certain tract of land, situate in the city of Hot Springs, upon the said Hot Springs reservation, in Garland county, State of Arkansas, more particularly described as follows, to wit: That part of the southwest quarter of the southwest quarter of section thirty-three (33), in township two (2) south, of range nineteen (19) west, on the Hot Springs reservation,
beginning four (4) chains and sixty-one (61) links south 29°
280 east where the southern boundary line running east and west
crosses the section- 32 and 33, in said township and range, of the private survey of Francis Langlois, survey known as the "New Madrid claim," thence east one° north along the north side of the German house, about one foot therefrom, one hundred and two feet four inches (102 ft. 4 inches) to the west side of Main street, to the northeast corner of the Kubler house porch; thence along the west side of said Main street forty-four links south one° east twenty-nine feet three inches (29 ft. 3 inches) to the southeast corner, thence west one° south ninety-six feet *feet* (96 ft.) to a plank fence, thence north 16° west to the place of beginning, containing nearly seven one-hundredths, $\frac{7}{100}$, part of an acre, being the lot or parcel of land on which the German house and gunsmith's shop adjoining is located, in said city of Hot Springs, State of Arkansas, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and all right, interest, and benefit that may hereafter accrue to us by virtue of our possession and improvements on said property, together with all dower and right of dower which the said parties of the first part have in and to the above-described premises, with all appurtenances thereon; to have and to hold all and singular the above-mentioned premises,

together with the appurtenances, unto the said party of the second part, his heirs and assigns forever.

In witness whereof the said parties of the first part have hereunto set their hands and seals this 12th day of September, 1876.

JOHN KUBLER.
CHRISTINA KUBLER.

Witness:
GODFREY KUBLER.
LOUISA D. KUBLER.

281 STATE OF ARKANSAS, }
County of Garland. }

Before me, T. P. Crin, a justice of the peace in and for said county and State, on this 12th day of September, 1876, personally appeared John Kubler and Christina Kubler, his wife, to me personally known to be the same persons whose names are subscribed to the foregoing deed as grantors, and acknowledged that they had executed the same for the consideration and purposes therein mentioned and set forth, and the said Christina Kubler, wife of said John Kubler, and the said Louisa Kubler, wife of the said Godfrey Kubler, having voluntarily appeared before me, and having been by me, separate and apart and out of hearing of their respective husbands, duly examined, they declared that they had of their own free will executed the said conveyance and had signed the relinquishment of their dower for the purposes therein set forth without compulsion or under influence of their respective husbands, and that they do not wish to retract the same.

In testimony whereof I have hereunto set my hand this 12th day of September, 1876.

T. P. CRIN, *J. P.*

Recorded on Book B, pages 401 & 402.

The petitioner files herewith copies of the documents hereinbefore referred to and makes them a part hereof. Wherefore he prays that the commissioners shall adjudge to him the right to purchase the said premises from the United States and for other proper relief.

GEORGE H. SMITH.

Endorsed: No. 362. Hot Springs Commission. Petition of Geo. H. Smith. Lot 2, block 77. Contest. Filed August 31st, '77. J. M. Anderson, clerk H. S. Com. Examined Feb. 13th, 1878; 4, 27, '78. Adjudicated Oct. 7th, 1879. Record B. 2, p. 77.

282 This indenture, made and entered into by and between John Kubler and Christina Kubler, his wife, and Godfrey Kubler and Louisa Kubler, his wife, all of Garland county, State of Arkansas, parties of the first part, and Dr. G. H. Smith, of same county and State, party of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of four hundred dollars ($400) to them in hand paid by the said party of the second part, the receipt of which is hereby acknowledged, have bargained, sold, conveyed, released, remised, and quit-

claimed, and by these presents do bargain, sell, convey, release, remise, and quitclaim, unto the said party of the second part and to his heirs and assigns forever all their right, title, and interest, as well in expectancy as in possession, in and to that certain tract of land, situate in the city of Hot Springs, upon the Hot Springs reservation, in Garland county, State of Arkansas, more particularly described as follows, to wit:

That part of the southwest quarter of southwest quarter of section thirty-three (33), in township two (2) south, of range nineteen (19) west, on the Hot Springs reservation, beginning four (4) chains and sixty-one (61) links south 29° east where the southern boundary line running east and west crosses the secti-ns 32 and 33, in said township and range, of the private survey of Francis Langlois, survey known as the "New Madrid claim," thence east 1° north along the north side of the German house, about one foot therefrom, one hundred and two feet four inches (102 ft. 4 inches) to the west side of Main street, to the northeast corner of the Kubler-house porch; thence along the west side of said Main street forty-four links south 1° east twenty-nine feet three inches (29 ft. 3 inches) to the southeast corner, thence west 1° south ninety-six feet (96 ft.) to a plank fence, thence north 16° west to the place of beginning, containing nearly seven one-hundredths ($\frac{7}{100}$) part of an acre, being the lot or parcel of land on which the German house and gunsmith shop adjoining is located, in said city of Hot Springs, State of Arkansas, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and
283 all right, interest, or benefit that may hereafter accrue to us by virtue of our possession and improvements on said property, together with all dower and right of dower which the said parties of the first part have in and to the above-described premises, with all appurtenances thereon; to have and to hold all and singular the above-mentioned premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns forever.

In witness whereof the said parties of the first part have hereunto set their hands and seals this 12th day of September, 1876.

JOHN KUPLER.
CHRISTINA KUBLER.
GODFREY C. KUBLER.
LOUISA D. KUBLER.

Witness:
F. SCHRICKER.

STATE OF ARKANSAS, }
County of Garland. }

Before me, T. P. Crin, a justice of the peace in and for said county and State, on this 12th day of September, 1876, personally appeared John Kubler and Christina Kubler, his wife, and Godfrey Kubler and Louisa Kubler, his wife, to me personally known to be the same persons whose names are subscribed to the for-going deed as grantors, and acknowledged that they had executed the same for the consideration and purposes therein mentioned and set forth; and the said

Christina Kubler, wife of the said John Kubler, and the said Louisa Kubler, wife of the said Godfrey Kubler, having voluntarily appeared before me, — separate and apart and out of hearing of their respective husbands duly examined, they declared that they had of their own free will executed the said conveyance and had signed the relinquishment of their dower for the purposes therein set forth without compulsion or undue influence of their respective husbands, and that they do not wish to retract the same.

284 In testimony whereof I have hereunto set my hand this 12th day of September, 1876.

T. P. CRIN, *J. P.*

Endorsed: Filed for record at 2.30 o'clock p. m., Sep. 13th, 1876. A. W. B. Reed, clerk, by Z. Beldin, D. C. Recorded in Book B, pages 401 & 402. Recording and tax, $2.00. Given before the Hot Springs Commission. Testimony in claim of G. H. Smith. No. 362. A. H. Cragin, ch.

STATE OF ARKANSAS, }
County of Garland, } *ss:*

I, A. W. B. Reed, county clerk, circuit clerk, and *ex officio* recorder in and for the county of Garland aforesaid, do hereby certify that the foregoing deed was filed in my office for record on the 14th day of September, A. D. 1876, at 2.30 o'clock p. m., and the same is now duly recorded, with the proper acknowledgments and certificate thereon, in Record Book B, on pages 401 and 402.

In witness whereof I have hereunto set my hand and affixed the seal of my office this 13th day of September, A. D. 1876.

A. W. B. REED,
Clerk and ex Officio Recorder,
By Z. BELDIN, *D. C.*

HOT SPRINGS, ARKANSAS,
AND IN THE TOWN OF HOT SPRINGS.

This agreement, made and concluded this 1st day of October, eighteen hundred and seventy, between Wm. H. Gaines, party of the first part, and John Kubler, party of the second part, witnesseth: That the said Wm. H. Gaines, for and in consideration of the terms hereafter expressed, hath rented or leased to the said John Kubler for his use and benefit all that portion or parcel

285 of land situated in Hot Springs, Ark., described as follows: Commencing ten feet south of shoemaker's shop and running twenty feet front on west side of street back to Sumpter's fence, for the space and term of three years or until the title to the Hot Springs quarter section is settled; said Kubler to have the privilege of erecting a house and have the privilege of removing such buildings as he may erect at the termination of lease; said lease not to be transferred without consent of Wm. H. Gaines, party of the first part; the said John Kubler, for himself, his heirs and assigns, to pay to the said Wm. H. Gaines, his landlord, or his heirs or assigns, the sum of two hundred dollars ($200) a year, to be

paid every quarter, in advance, the sum of fifty dollars ($50); rent to commence on the 1st day of October, in the year of our Lord eighteen hundred and seventy (1870).

WM. H. GAINES. [SEAL.]
JOHN KUBLER. [SEAL.]

$50. Received of John Kubler fifty dollars for the first quarter, commencing on the first day of October, 1870, to the 1st day of January, 1871.

WM. H. GAINES.

Endorsed: Lease between Wm. H. Gaines and John Kubler. Quarterly in advance the sum of $50 each and every 1st day of October, January, April, and July. Given in testimony in claim of G. A. Smith, No. 362, before the Hot Springs Commission. A. H. Cragin, ch.

This indenture, made and entered into on the 2nd day of October, in the year eighteen hundred and seventy-six, by and between Albert O. Morgan, a receiver of the Hot Springs property, appointed by the Court of Claims under the authority of the fifth section of the
286 "Act in relation to the Hot Springs reservation in Arkansas," passed in the year 1870, party of the first part, and G. H. Smith, of Hot Springs, in the county of Garland, State of Arkansas, party of the second part, witnesseth:

That, in consideration of the rent hereinafter reserved and the stipulations hereinafter contained, the said party of the first part, under the authority of said act and said court and on behalf of the United States, does hereby grant, demise, and to farm-let unto the said party of the second part a certain piece or parcel of land situated within the said Hot Springs reservation described as follows, to wit:

Commencing at a point north 8° 30″ east of section corner post for section- thirty-two and thirty-three, township two south, and sections four and five, township three south, range nineteen west, and distant therefrom six hundred and seventy-seven feet, thence bearing south 81° west one hundred feet south 9° east twenty-nine feet; thence north 81° east one hundred feet; thence north 9° west twenty-nine feet to point of commencement, laying and being in the southwest quarter of southwest quarter of section thirty-three, township two south, range nineteen west, all the above bearings being read from the magnetic meridian:

To have and to hold the same, with all the rights, privileges, and appurtenances thereunto belonging, unto the said party of the second part, his heirs, executors, administrators, and assigns, for and during the term of one year, commencing on the second day of October, 1876, and fully to be completed and ended, the said party of the second part yielding and paying to the said party of the first part or his successor as receiver as rent for the same the sum of three hundred and sixty dollars for the term aforesaid, payable in equal monthly installments of thirty dollars each, in advance, on the first

day of each month of said term, at the office of said receiver, in Hot Springs aforesaid.

And, in consideration of the for-going demise, it is covenanted and agreed between the parties as follows:

1st. The party of the second part shall not do or permit
287 any waste of the demised premises during the term aforesaid or during additional time after the close of said term that the said party of the second part may remain in possession of the premises.

2. At the expiration of said term the possession of the premises shall be delivered to the party of the first part or his successor as receiver, or to any other agent or representative of the United States who may by law become entitled to receive such possession.

3. If the party of the second part shall fail at any time to pay the rent aforesaid or to perform and fulfil any of the stipulations herein entered into on his part, or shall attempt in any respect to resist or obstruct the authority of the party of the first part as receiver or that of his successor in office, then, in any such case, the party of the first part or his successor may, at his own will and without demand upon or notice to the party of the second part or to any one occupying the premises, enter into and upon the premises without taking any legal proceedings to that end and summarily and, if necessary, forcibly eject and expel from the premises the party of the second part and all other occupants thereof and take full possession of the premises on behalf of the United States, without being held guilty of trespass and without — to any other remedies available to him or to the United States in such case, either at law or in equity.

L. There are upon the demised premises the following improvements, to wit, a two-story frame building, 20 feet x 40 feet, used as a boarding-house. If during the said term the said building should be destroyed by the act of God or by fire not due to the fault of the lessee, or should in either of said ways be so damaged as to be unfit for habitation, then and in such case, if desired by the lessee, this lease shall be terminated; but, if not so desired, it shall remain in force as to the land and a proportionate rent for the land shall be paid, which proportionate rent shall be fixed by the party of the first part or his successor in office.

5. If at the expiration of the term aforesaid the party of the second part should desire a renewal of this lease for a period not
288 exceeding one year, the same may be renewed by endorsement by the receiver upon this lease.

6. No assignment of this lease nor any subletting of the demised premises shall be valid unless the consent of the party of the first part or his successor as receiver shall first have been obtained in writing.

7. The party of the first part or his successor as receiver may at all seasonable times enter into and upon the demised premises and any building thereon for the purpose of examining the condition thereof.

In witness whereof the said parties have executed this lease in

duplicate, signed their names, and affixed their seals to each part thereof the day and year first above written.

ALBERT O. MORGAN. [L. S.]
G. H. SMITH. [L. S.]

Executed in presence of—
WM. NELSON.
WM. NELSON.

Endorsed: Receiver of Hot Springs reservation to G. H. Smith. Lease. Expirses October 1st, 1877. Given in testimony in claim of G. H. Smith, No. 362, before the Hot Springs Commission. A. H. Cragin, ch.

FEBRUARY 13TH, 1878.

In the Claim of GEORGE H. SMITH. No. 362.

This claim is consolidated with that of Wm. H. and Maria Gaines, No. 784.

289 GEORGE H. SMITH sworn and examined.

Examined by Mr. MURPHY:

Q. State your name, age, and residence.
A. Geo. H. Smith; age, —, and reside at Hot Springs.
Q. Is the map filed with your claim a correct description of it?
A. Yes, sir; I believe so. Col. French made it.
Q. And that is the land you claim?
A. Yes, sir.
Q. What improvements are on it?
A. A two-story building twenty feet wide and running back fifty-eight and one-half feet, I think, and there is an additional one-story house, which is about nine and a half feet wide and runs back the same length as the other, except a little space in the center.
Q. When was this house built?
A. In 1870, I think.
Q. By whom?
A. By John Kubler.
Q. How do you derive your claim to it?
A. By purchase from him.
Q. When did you purchase from him?
A. September 12th, 1876.
Q. What did you pay him for it?
A. $400.
Q. Who was in possession when you bought?
A. John Kubler and wife.
Q. Who has been in possesrion since?
A. I have.
Q. Did you rent it from the receiver when he came here?
290 A. Yes, sir.
Q. Did you get a lease?
A. Yes, sir.

Lease from the receiver offered in evidence and marked Exhibit No. 1.

Q. Who is in possession now?
A. I am.
Q. What is the house worth?
A. I think about $1,500.

By Com. CONURN:

Q. What is it used for?
A. There is a part of it used for a drug store down-stairs. I sold the drug store a year ago. Then I kept my office next door, and upstairs I keep the rooms myself as a residence, and rented some of the rooms.
Q. Is this office of yours part of the building you have described?
A. Part of the house.
Q. Have you reckoned that office in the value of your improvements?
A. Yes.
Q. Was it built before the 24th of April, 1876?
A. Yes, sir. I bought them altogether and have made alterations since then.
Q. Then the whole breadth of your house is something like 30 feet?
A. The whole building is 29 feet 3 inches, and then there is an alleyway north of my office of about four feet.
Q. Between your office and the main building?
A. Between my office and the Wakelin building, a little alleyway that runs back to the Sumpter lot. We claim half of it as belonging to this building of mine and half to Wakelin's.

Cross-examination.

Examined by Mr. BENJAMIN:

291 Q. Were you here in 1870?
A. No; was in 1876.
Q. How do you know that Kubler built that house in 1870?
A. Because I have got Mr. Gaines' deed and Mr. Kubler's word.
Q. How did Mr. Kubler occupy that ground?
A. There is the lease.
Q. Who is it from?
A. Major Gaines.
Q. Did he show you that lease when you purchased it.
A. No, sir.
Q. You knew he had that lease when you purchased it?
A. I supposed he had.

JOHN KUBLER sworn and examined.

Examined by Mr. MURPHY:

Q. State your name, age, and residence.
A. John Kubler; age, —, and reside at Hot Springs.

Q. Did you hear me read the description of the land in the petition of Mr. Smith?
A. Yes.
Q. Do you know that land?
A. Yes.
Q. What improvement- are on it now?
A. House on it that I built and a shop.
Q. When did you build it?
A. On October, 1870.
Q. Did you build the office now occupied by Dr. Smith?
A. I built a house first and then a shop. I built the shop two years afterwards.

292 By Com. COBURN:

Q. Any buildings there when you built?
A. No; a few trees were on the land and I chopped them off.
Q. Did you rent the land from Major Gaines?
A. Yes.
Q. Was it enclosed with a fence or anything when you rented it?
A. Nothing at all.
Q. How long did you occupy the house?
A. Five years.
Q. What did you do with it?
A. I kept a boarding-house.
Q. Did you sell it to any one?
A. To Dr. Smith.
Q. Do you recollect the date of the sale to him?
A. It was September 10th or 12th, 1876.
Q. What is that office and house worth?
A. I do not know. It cost me $1,100.

Cross-examined by Mr. BENJAMIN:

Q. You say you had a lease from Major Gaines?
A. Yes, sir.
Q. Look at that and see if it is your lease?
A. Yes, sir.
Q. Is it your signature?
A. Yes.
Q. Did not Major Gaines have an old building removed from that ground about the time you leased it so that you could build?
A. He did not.
293 Q. You paid Major Gaines rent regularly?
A. When I had the money.
Q. Is the rent all paid up, or are you still behind?
A. I could not pay him all.

By Com. COBURN:

Q. How much do you suppose you paid him in all?
A. About nine or ten hundred dollars.

WILLIAM H. MORRIS, sworn and examined.

Examined by Mr. MURPHY:

Q. State your name, age, and residence.
A. Wm. H. Morris; age, thirty-three; and reside at Hot Springs.
Q. Do you know the land and house described in this petition of Dr. Smith?
A. Yes, sir.
Q. How long since you first saw them?
A. Three months.
Q. Never before?
A. No, sir.
Q. What is your occupation?
A. Carpenter and builder.
Q. Have you examined that house?
A. Yes; at the request of Dr. Smith.
Q. State its value
A. I measured the house, and found it to be, as it stands now, 29 feet 3 inches in front and 58 feet 6 inches deep. I estimate the building as being worth about $1,650. To put up a new
291 building like that would cost from $2,000 to $2,200.

By Com. COBURN:

Q. What state of repair is it in?
A. In good repair.

GEORGE H. SMITH recalled:

Q. You said something about selling out the drug store in your testimony. State what you meant and what you sold.
A. When I first came here, in 1874, I entered into the business as a druggist and conducted it until a year ago, when I sold out the drugs.
Q. You did not sell the house, but sold your stock?
A. Yes, sir; I rented the lower store to the purchaser of the stock.

The original deed from Kubler to Dr. Smith, dated September 12th, 1876, marked Exhibit No. 2.

Mr. Benjamin offers in evidence the lease of Gaines to Kubler, dated October 1st, 1870, and marked Exhibit "A."

THURSDAY, *February 27th*, 1878.

In rebuttal, JOHN KUBLAR recalled.

Examined by Mr. BENJAMIN:

Q. Do you *gnow* the ground occupied by George H. Smith?
A. Yes.
Q. I believe you testified that a portion of that ground you had a written lease for before you sold to George H. Smith?
A. Yes.
Q. State whether Major Gaines gave you any permission to build and whether you paid any rent on the ground south.

A. I built on here a shooting gallery, and Major Gaines
295 said he would not charge me anything as long as I did not build any more.

Q. You got permission of Major Gaines to build there?

A. Yes; I built a house. I got permission to use the ground from Major Gaines.

By Mr. MURPHY:

Q. It was all unimproved at that time?

Q. Yes.

Endorsed: No. 362. In the claim of Geo. H. Smith. Testimony of Geo. H. Smith, John Kubler, William H. Morris, given before the Hot Springs Commission. A. H. Cragin, ch.

TUESDAY, *October 7th*, 1879.

In the claim of GEO. H. SMITH. No. 362.

At this time comes the petitioner, Geo. H. Smith, and tte commission having heard and considered the *commission* and testimony, as also the testimony in claim No. 784, William H. Gaines and Maria Gaines, do say and find that the claim of the petitioner accrued prior to the 24th day of April, A. D. 1876, by reason of the use, occupation, and improvement of the premises described in the petition, and that the petitioner is the owner and entitled to the possession of the improvements made thereon; and the commission, having had the premises surv*a*yed and having inspected and caused the same to be platted, nsmbered, and scheduled, and having appraised the same, as provided by law, and being sufficiently advised of the premises, do further say and find that the petitioner is entitled to purchase from the United States the following-described land, in Hot Springs, to wit, lot noumbered two, in block nur.bered seventy-seven, for the sum of seven hundred and
296 five dollars, that being the appraised value thereof.

It is therefore ordered and adjudged that the said Geo. H. Smith is entitled to purchase said lot numbered two, in block numbered seventy-seven, for said sum of seven hundred and five dollars, and that a certificate be is-ued to him for the right to purchase the same, containing 2,890 feet.

Copy of Receipts.

22.00. HOT SPRINGS, ARK., *July 18th*, 1876.

Received of Mr. John Kubler twenty-two dollars in full payment of rent of premises upon the Hot Springs reservation for the month ending June 30th, 1876, and described in lease No. —, to be granted if statements are correct.

No. —. (Signed) A. O. MORGAN, *Receiver.*

$8.00. HOT SPRINGS, ARK., *July 18th*, 1876.

Received of Mr. G. L. Kubler eight dollars in full payment of rent of premises upon Hot Springs reservation for the month

ending June 30th and described in lease No. —, to be granted if statements prove satisfactory.

No. —. (Signed) A. O. MORGAN, *Receiver.*

$22.00. HOT SPRINGS, ARK., *August 9th*, 1876.

Received of Mr. John Kubler twenty-two dollars on account of rent of premises upon the Hot Springs reservation for the month ending July 31st, 1876.

No. —. (Signed) A. O. MORGAN, *Receiver.*

297 $68.00. HOT SPRINGS, ARK., *September 13th*, 1876.

Received of Mr. Geo. H. Smith sixty-eight dollars in full payment of rent of premises upon the Hot Springs reservation for the month ending September 30th, 1876, and described in lease No. —, granted.

July	8	Oct.	22
Aug.	8	Sep.	22
Sep.	8		
	24		44
			24
			$68

No. —. (Signed) A. O. MORGAN, *Receiver.*

STATE OF ARKANSAS, }
County of Garland. }

I, John H. Scroggins, a duly commissioned, qualified, and acting notary public within and for the county of Garland and State of Arkansas, do solemnly certify that the above and foregoing is a true and perfect copy of four receipts or vouchers given by A. O. Morgan, late receiver of the Hot Springs reservation, in the State of Arkansas, to the parties therein named, to wit, John Kubler, G. L. Kubler, and G. L. Smith, for certain lots of land embraced in said Hot Springs reservation.

In testimony hereof I have hereunto set my hand and [SEAL.] seal as such notary public on this the 3rd day of December, 1885.

J. H. SCROGGINS,
Notary Public.

Endorsed: Copies of receipts of U. S. Receiver A. O. Morgan for lots of land on Hot Springs reservation to Dr. Geo. H. Smith.

298 And on April 21st, 1888, as follows:

WILLIAM H. GAINES and MARIA GAINES } 634. Final Decree.
vs.
GEORGE H. SMITH. }

Now, on this day, come the said plaintiffs, by their solicitors, M. W. Benjamin and R. G. Davies and U. M. & G. B. Rose, Esqs., and

also comes the said defendant, Geo. H. Smith, by John McClure, Esq., his solicitor; and the special master having heretofore filed his report herein, and the case now coming on for hearing, and the court having heard the argument of counsel and being now sufficiently advised as to the further decree to render herein—

It is ordered, adjudged, and decreed that all the exceptions of the defendant to the master's report be, and the same are, overruled, and thereupon the court finds and states the account between the plaintiff and defendant as follows:

To amount due plaintiff for rent, according to the terms of the lease, from the date of award to the date of the filing of the bill in this case and interest, nineteen hundred and forty-four dollars and sixteen cents ($1,944.16).

To amount due him since said date and until the filing of the master's report, rental value of the property and interest, fifteen hundred and sixty-five dollars and fifty-three cents ($1,565.53).

To amount of rent to date of this decree, three hundred and forty-two dollars and fifty cents ($342.50), amounting in the aggregate to the sum of thirty-eight hundred and fifty-two dollars and twenty-nine cents ($3,852.29).

By amount due the defendant for taxes paid and interest, eight hundred and thirty-eight dollars and eighty-seven cents ($838.37).

By amount of purchase-money paid by him to Government for said lot and interest, four hundred and eighteen dollars and seventy-seven cents ($418.77).

By present value of the improvements, twenty-three hundred and sixty-four dollars and fifty cents ($2,364.50); which said sums amount in the aggregate to three thousand six hundred and twenty-two dollars and fourteen cents ($3,622.14), which leaves the sum of
299 two hundred and thirty dollars and fifteen cents ($230.15), which the court finds to be the balance now due the plaintiffs, and if not paid in ninety days plaintiffs shall have execution therefor, together with the costs of this suit.

And it is further ordered and decreed that the said plaintiffs do have and recover from said defendant the possession of said lot two, in block seventy-seven, in said city of Hot Springs, and that a writ of possession issue, and serving a copy of this decree shall be the writ.

It is further ordered that N. W. Cox be allowed the sum of one hundred dollars for his services as special master herein; and the defendant prays and appeal to the supreme court, which is granted; and it is ordered that upon his executing and filing a bond, within the time and conditioned as prescribed by law, in the sum of three thousand dollars, and a cost bond for two hundred and fifty dollars, with good, approved security, the decree be superseded pending said appeal. The court finds the value of the property in controversy to be six thousand dollars and more.

DAVID J. BREWER,
Circ't Judge.

And on June 16th as follows:

WM. H. GAINES and WIFE
vs. } 634.
GEO. H. SMITH *et al.*

Comes the defendant, Geo. H. Smith, and files herein his supersedeas and cost bond, which is approved by the court; which supersedeas bond is as follows:

300 UNITED STATES OF AMERICA,
Eastern District of America.

Know all men by these presents we, Geo. H. Smith, as principal, and A. Erhart, as sureties, are firmly bound unto Wm. H. Gaines and Maria Gaines, his wife, in the penal sum of three thousand dollars for damages and two hundred and fifty dollars for costs; for the payment of which, well and truly to be made, we bind ourselves, our executors and administrators, firmly by these presents.

The condition of this bond is such that whereas the said Geo. H. Smith has appealed to the Supreme Court of the United States from the final decree of the circuit court of the United States for the eastern district of Arkansas, in chancery, in a certain cause, numbered 634 on the chancery docket of said court, pending in said circuit court, wherein Wm. H. Gaines and Maria Gaines, his wife, are complainants and the said Geo. H. Smith and others were and are defendants:

Now, if the said Geo. H. Smith shall prosecute his said appeal to effect and if he shall fail to make his plea good *and* shall answer all damages and costs in the decree rendered and to be rendered against him, then this bond shall be void; otherwise to remain in full force.

In witness whereof we have hereunto set our hands and seals this 14th day of June, 1888.

GEO. H. SMITH. [SEAL.]
A. ERHART. [SEAL.]

G. H. Smith states that he is a resident of the State of Arkansas; that he is worth beyond his debts and exempt from execution the sum of $1,500, and that he has property subject to execution in said State for that amount.

GEO. H. SMITH.

Sworn to and subscribed before me this 14th day of June, 1888.
[SEAL.] WM. HUNT,
Notary Public.

301 A. Erhart states that he is a resident of the State of Arkansas; that he has property in this State subject to execution to the amount of $2,000, and that said amount is over and above all debts and subject to process within this State.

A. ERHART.

Sworn to and subscribed to before me this 14th day of June, 1888.

[SEAL.] WM. HUNT,
Notary Public.

(Endorsed:) Filed June 16th, 1888. Ralph L. Goodrich, clerk.

302 UNITED STATES OF AMERICA, }
Eastern District of Arkansas. }

I, Ralph L. Goodrich, clerk of the circuit court of the United States for the eastern district of Arkansas, in the eighth circuit, hereby certify that the foregoing writings annexed to this certificate are true, correct, and compared copies of the original remaining of record in my office.

In witness whereof I have hereunto set my hand and the seal of said court this 1st day of October, in the year of our Lord one thousand eight hundred and eighty-eight, and of the Independence of the United States of America the one hundred and thirteenth.

The Seal of the Circuit Court, Western Division of East. Dist. Ark., U. S. A.

Attest:

RALPH L. GOODRICH, *Clerk*,
By W. P. FEILD, *D. C.*

Endorsed on cover: Case No. 13,455. E. Arkansas C. C. U. S. No. 302. George H. Smith, appellant, *vs.* William H. Gaines and Maria Gaines. Filed January 2, 1889.